

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

SIERRA CLUB,

Plaintiff,

v.

STEPHEN L. JOHNSON, in his official  
capacity as acting Administrator, United  
States Environmental Protection Agency,

Defendant.

Hon. John C. Shabaz

Case No. 07-C-0154-S

CONSENT DECREE

WHEREAS, the Complaint in the above-captioned case filed by Plaintiff Sierra Club ("Plaintiff") alleges that the Defendant (hereafter "EPA") has a nondiscretionary duty under Clean Air Act section 505(b)(2), 42 U.S.C. § 7661d(b)(2), to respond within 60 days after the filing of an administrative petition regarding a heating plant for the University of Wisconsin in the State of Wisconsin known as the Walnut Street Heating Plant ("Walnut Street Heating Plant"), and that EPA has not done so;

WHEREAS, the Complaint in the above-captioned case filed by Plaintiff alleges that EPA has a nondiscretionary duty under Clean Air Act section 505(b)(2), 42 U.S.C. § 7661d(b)(2), to respond within 60 days after the filing of an administrative petition regarding an industrial facility that manufactures engineered wood siding in the State of Wisconsin known as the Louisiana Pacific Corporation Facility ("Louisiana Pacific Facility"), and that EPA has not done so;

WHEREAS, Plaintiff contends that it is entitled, pursuant to Clean Air Act section

Copy of this document has been  
provided to: Atty's Bendin

Heidi Branning

This 23 day of Oct, 2007

By [Signature]

Deputy Clerk

304(d), 42 U.S.C. § 7604(d), to an award of costs of litigation (including reasonable attorneys' fees) with respect to the claims asserted in the Complaint;

WHEREAS, Plaintiff and EPA (collectively the "Parties") wish to effect a settlement of the above-captioned case without expensive and protracted litigation;

WHEREAS, the Parties have agreed to a settlement without admission of any issue of fact or law;

WHEREAS, by entering into this Decree, the Parties do not waive or limit any claim or defense, on any grounds, related to any final EPA action approving, disapproving, and/or modifying, revoking or terminating Title V permits for the Walnut Street Heating Plant and the Louisiana Pacific Facility;

WHEREAS, the Parties consider this Decree to be an adequate and equitable resolution of the claims in the above-captioned case; and

WHEREAS, the Court, by entering this Decree, finds that the Decree is fair, reasonable, in the public interest, and consistent with the Clean Air Act, 42 U.S.C. §§ 7401-7671q.

NOW THEREFORE, before the taking of testimony, without trial or determination of any issue of fact or law, and upon the consent of the Parties, it is hereby ordered, adjudged and decreed that:

1. EPA shall, within ten (10) business days after the entry of this Decree by the Court, sign its response to the administrative petition dated May 23, 2005, regarding the Title V permit for the Walnut Street Heating Plant, that was submitted to EPA by Plaintiff. After EPA signs the response, EPA shall provide written notice to Plaintiff as expeditiously as possible.
2. EPA shall, within ten (10) business days after the entry of this Decree by the

Court, sign its response to the administrative petition dated May 9, 2006, regarding the final Title V permit for the Louisiana Pacific Facility, that was submitted to EPA by Plaintiff. After EPA signs the response, EPA shall provide written notice to Plaintiff as expeditiously as possible.

3. Nothing in this Decree waives Plaintiff's rights, if any, to seek judicial review of the Administrator's responses specified in Paragraphs 1 and 2 by the United States Court of Appeals for the appropriate circuit pursuant to sections 307(b)(1) and 505 of the Clean Air Act, 42 U.S.C. §§ 7607(b)(1), 7661d.

4. Nothing in this Decree shall be construed to limit or modify the discretion accorded EPA by the Clean Air Act and by general principles of administrative law, including the discretion to alter, amend or revise any responses or final actions, if any, contemplated by this Decree. EPA's obligation to perform the actions specified in Paragraphs 1, and 2, and the date specified in Paragraphs 1 and 2, do not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

5. Nothing in this Decree shall be construed to confer upon the district court jurisdiction to review any decision, either procedural or substantive, to be made by EPA pursuant to this Decree. Nothing in this Decree shall be construed to confer upon the district court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals pursuant to sections 307(b)(1) and 505 of the Clean Air Act, 42 U.S.C. §§ 7607(b)(1), 7661d.

6. The United States shall pay \$3,454.66 to Plaintiff by electronic funds transfer to the following account:

Bank Name: Wells Fargo Bank

Bank Address: 420 Montgomery St., San Francisco, CA 94104  
ABA Routing #: 121000248  
Account #: 4159389881  
Name of Account: Sierra Club, 85 Second St. 2nd Fl., San Francisco, CA 94105

7. The Parties recognize and acknowledge that the obligations of the United States under this Decree can only be performed using appropriated funds legally available for such purpose. Nothing in this Decree shall be interpreted or construed as a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law. In the event that sufficient appropriated funding is not available, the Parties shall attempt to adjust the obligations in Paragraphs 6 and 8 accordingly.

8. Plaintiff agrees that performance of the obligations described in Paragraphs 1, 2, and 6 shall constitute a full and complete settlement of all claims that Plaintiff has asserted or could have asserted under any provision of law in connection with this case, including those for attorneys' fees or other litigation costs. Upon completion of the obligations in paragraphs 1, 2, and 6, Plaintiff discharges and covenants not to sue the United States, including EPA, for the claims in the Complaint.

9. Any notices required or provided for by this Decree shall be made in writing, via facsimile or other means, and sent to the following:

For Plaintiff:

Bruce Nilles  
Sierra Club  
122 West Washington Avenue, Suite 830  
Madison, WI 53703  
Fax: (608) 257-3513

David Bender  
Garvey McNeil & McGillivray, S.C.  
634 W. Main Street, Suite 101  
Madison, WI 53703  
Fax: (608) 256-1003

For Defendant:

Matthew R. Oakes  
U.S. Department of Justice  
Environment & Natural Resources  
Division  
Environmental Defense Section  
P.O. Box 23986  
Washington, DC 20026-3986  
Fax: (202) 514-2686

Amy Huang Branning  
Office of General Counsel  
U.S. Environmental Protection Agency  
Ariel Rios Bldg., MC 2344A  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460  
Fax: (202) 566-0070

10. The Parties may modify nonsubstantive provisions of this Decree by written stipulation executed by counsel for the Parties and filed with the Court.

11. In the event of a dispute between the Parties concerning the interpretation or implementation of any aspect of this Decree, the disputing party shall provide the other party with a written notice outlining the nature of the dispute and requesting informal negotiations. If the Parties cannot reach an agreed-upon resolution within five (5) business days after receipt of the notice, any party may move the Court to resolve the dispute.

12. Subject to the process set out in Paragraph 11:

(a) this Court shall retain jurisdiction over the above-captioned case for the purposes of enabling the Parties to apply to the Court for any further orders that may be necessary to construe, implement or enforce compliance with the terms and conditions set forth in this Decree; and

(b) the Court may modify the obligations of this Decree for good cause shown by any party.

13. No motion or other proceeding seeking to enforce this Decree or for contempt of Court shall be properly filed unless Plaintiff has first followed the procedure set forth in Paragraph 11, and provided EPA with written notice received at least five business days before the filing of such motion or proceeding.

14. When EPA's obligations under Paragraphs 1 and 2 have been completed, and Plaintiff's claim for costs of litigation has been resolved pursuant to the process described in Paragraph 6, this Decree shall be terminated, and the above-captioned case shall be dismissed with prejudice. EPA shall file the appropriate notice with the Court so that the Clerk may close the file.

15. This Decree and this Court's jurisdiction over the above-captioned case shall terminate upon completion of all requirements of this Decree.

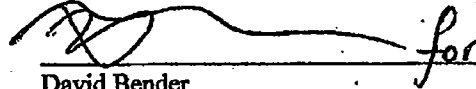
16. The Parties agree and acknowledge that before this Decree is entered by the Court, EPA must provide public notice of the proposed settlement in the Federal Register and an opportunity for public comment pursuant to Clean Air Act section 113(g), 42 U.S.C. § 7413(g). EPA will promptly submit a public notice of this Decree to the Federal Register for publication and public comment. After this Decree has undergone an opportunity for notice and comment,

the Administrator and/or the Attorney General, as appropriate, will promptly consider any such written comments in determining whether to withdraw or withhold their consent to the Decree, in accordance with section 113(g) of the Clean Air Act. If the Administrator and/or the Attorney General do not elect to withdraw or withhold their consent, the Parties will promptly file a motion that requests the Court to enter this Decree.

17. The undersigned representatives of each Party certify that they are fully authorized by the Party that they represent to bind that Party to the terms of this Decree.

**COUNSEL FOR PLAINTIFF:**

Dated: August 21, 2007

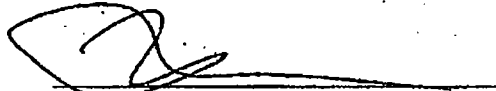
  
David Bender  
Garvey McNeil & McGillivray, S.C.  
634 W. Main Street, Suite 101  
Madison, WI 53703



**COUNSEL FOR DEFENDANT:**

Dated: August 23, 2007

RONALD J. TENPAS  
Acting Assistant Attorney General  
Environment & Natural Resources Division



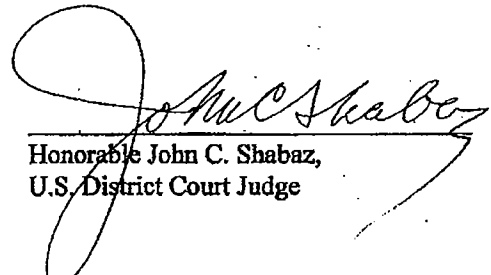
Matthew R. Oakes  
U.S. Department of Justice  
Environment & Natural Resources Division  
Environmental Defense Section  
P.O. Box 23986  
Washington, DC 20026-3986

LESLIE K. HERJE  
Assistant United States Attorney  
Chief, Civil Division  
P.O. Box 1585  
Madison, Wisconsin 53701-1585  
(608) 264-5158  
TTY (608) 264-5006

Amy Huang Branning  
Office of General Counsel  
U.S. Environmental Protection Agency  
Ariel Rios Bldg., MC 2344A  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

**IT IS SO ORDERED.**

Dated: 10/23/07, 2007



Honorable John C. Shabaz,  
U.S. District Court Judge

CLOSED

**U.S. District Court  
Western District of Wisconsin (Madison)  
CIVIL DOCKET FOR CASE #: 3:07-cv-00154-jcs**

SIERRA CLUB v. JOHNSON, STEPHEN L.  
Assigned to: Judge John C Shabaz  
Referred to: Magistrate Judge Stephen L Crocker  
Demand: \$0  
Cause: No cause code entered

Date Filed: 03/19/2007  
Date Terminated: 10/23/2007  
Jury Demand: None  
Nature of Suit: 893 Environmental Matters  
Jurisdiction: Federal Question

Date Filed	#	Docket Text
03/19/2007		NORTC – FEE PAID. (Entered: 03/19/2007)
03/19/2007	1	JS-44 (Entered: 03/19/2007)
03/19/2007	2	COMPLAINT – SUMMONS ISSUED. (Entered: 03/19/2007)
03/30/2007	3	DISCLOSURE OF CORP. AFFIL. & FINAN. INT. BY PLTF. (Entered: 03/30/2007)
03/30/2007	4	SUMMONS (Entered: 03/30/2007)
05/21/2007	5	NOTICE OF APPEARANCE BY MARK WATT FOR DEFT. (Entered: 05/22/2007)
05/21/2007	6	ANSWER (Entered: 05/22/2007)
05/31/2007	7	PPTC REPORT BY PLTF. (Entered: 05/31/2007)
06/01/2007	8	PPTC REPORT BY DEFT. (Entered: 06/01/2007)
06/05/2007	9	PTC ORDER (Entered: 06/05/2007)
08/24/2007	10	MOTION (JOINT) TO STAY PROCEEDINGS PENDING PUBLICATION OF PROPOSED CONSENT DECREE. (Entered: 08/24/2007)
08/24/2007	11	NOTICE OF APPEARANCE BY MATTHEW OAKES AS COUNSEL FOR USA. (Entered: 08/24/2007)
08/24/2007	12	GOVT. NOTICE OF LODGING PROPOSED CONSENT DECREE. (Entered: 08/24/2007)
08/27/2007	13	ORDER STAYING ALL PROCEEDINGS PENDING PUBLICATION OF PROPOSED CONSENT DECREE IN FEDERAL REGISTER. CC MLD (Entered: 08/27/2007)
08/27/2007		MOTION FOR PUBLIC COMMENT ON CONSENT DECREE WITHIN 30-DAYS. (UTILITY ENTRY ONLY). (Entered: 09/05/2007)
09/10/2007	14	NOTICE OF PUBLICATION OF CONSENT DECREE BY DEFT. (Entered: 09/10/2007)
10/18/2007	15	MOTION FOR ENTRY OF CONSENT DECREE by all parties. (lj) (Entered: 10/20/2007)
10/22/2007	<u>16</u>	ORDER granting 15 Motion for Entry of Consent Decree. Signed by Judge John C Shabaz on 10/22/07. (mcb) (Entered: 10/22/2007)
10/23/2007	17	CONSENT DECREE Signed by Judge John C Shabaz on 10/23/2007. (lj) (Entered: 10/23/2007)

SETTLEMENT AGREEMENT

WHEREAS, Plaintiff the State of New Jersey Department of Environmental Protection ("Plaintiff") filed a Complaint on February 6, 2007 against Defendant Stephen L. Johnson, in his official capacity as Administrator, United States Environmental Protection Agency, captioned *State of New Jersey, Department of Environmental Protection v. Johnson*, No. 07-0612;

WHEREAS, Plaintiff's Complaint alleges that EPA has a mandatory duty pursuant to 42 U.S.C. § 7661d(b)(2) to respond to Plaintiff's petition, dated July 21, 2006, requesting that EPA object to a Clean Air Act Title V permit issued to Reliant Energy Mid-Atlantic Power Holdings LLC for its Portland Generating Station, located in Upper Mt. Bethel Township, Northampton County, Pennsylvania;

WHEREAS, Plaintiff's Complaint further seeks an award of Plaintiff's costs, including attorney fees;

WHEREAS, the parties entered into a prior Settlement Agreement, pursuant to which EPA took action on Plaintiff's permit petition on June 20, 2007;

WHEREAS, pursuant to the parties' prior Settlement Agreement, the parties agreed to first seek to resolve informally Plaintiff's claim for costs of litigation (including attorney fees), and if they could not, to submit this issue to the Court for resolution;

WHEREAS, the parties now wish to settle Plaintiff's claim for costs of litigation, including attorney fees, in order to avoid unnecessary litigation, and without any admission of fact or law;

NOW THEREFORE, it is agreed:

1. The United States shall pay, as soon as reasonably practicable, \$3,700, to the State of New Jersey, by electronic funds transfer in accordance with instructions provided to the undersigned defense counsel by Plaintiff's counsel.

2. Any obligations of the United States to expend funds under this Settlement Agreement are subject to the availability of appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341. This Settlement Agreement shall not be construed to require the United States to obligate or pay funds in contravention of the said Anti-Deficiency Act, 31 U.S.C. § 1341.

3. Plaintiff agrees that payment pursuant to Paragraph 1 within 90 days of the date on which the Agreement has been executed by both parties will constitute full and final payment of costs of litigation (including reasonable attorney fees) incurred by Plaintiff in connection with this matter. If payment is made after 90 days of the date on which the Agreement is executed and Plaintiff accepts payment, such payment will constitute full and final payment of costs of litigation (including reasonable attorney fees) incurred by Plaintiff in connection with this matter, *State of New Jersey, Department of Environmental Protection v. Johnson*, No. 07-0612. Upon payment within 90 days of the date on which the Agreement has been executed, or upon payment after 90 days if Plaintiffs accept payment, Plaintiff releases the United States, including EPA, from any claims regarding such fees and costs in connection with this matter.


4. In the event that the United States fails to pay the sum specified in Paragraph 1 of this Agreement within 90 days of the date on which the Agreement has been executed by both parties, Plaintiff may file a motion with the Court for its costs of litigation (including reasonable attorney fees). Plaintiff also reserves the right to seek additional costs of litigation, including attorney fees, that are related to the filing of such a motion. The parties agree that in litigation over such fee application, they will not disclose to the Court the amount agreed upon in paragraph 1, and that the United States reserves any defenses it may have to a fee application.

5. Within 10 days of the date on which the Agreement has been executed by both parties, Plaintiff shall file a motion to dismiss this action. The dismissal shall be with prejudice, except that Plaintiff may reserve the ability to file a motion for costs of litigation (including reasonable attorney fees), in the event that the United States fails to pay the sum specified in Paragraph 1 of this Agreement within 90 days of the date on which the Agreement has been executed by both parties.

6. The undersigned representatives of the parties certify that they are fully authorized by the party or parties they represent to enter into and execute the terms and conditions of the settlement agreement. By signature below, all parties consent to this settlement agreement.

SO AGREED:

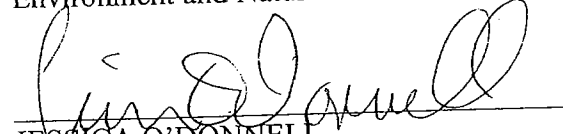
ANNE MILGRAM  
Attorney General  
State of New Jersey

  
KEVIN P. AUERBACHER  
Deputy Attorney General  
R.J. Hughes Justice Complex  
P.O. Box 093  
25 Market Street  
Trenton, NJ 08625  
(609) 292-6945

For Plaintiff State of New Jersey Department  
of Environmental Protection

Dated: 10-23-2007

RONALD J. TENPAS  
Acting Assistant Attorney General  
Environment and Natural Resources Division

  
JESSICA O'DONNELL  
U.S. Department of Justice  
Environmental Defense Section  
P.O. Box 23986  
Washington, D.C. 20026-3986  
(202) 305-0851

For Defendant Stephen L. Johnson

Dated: 10/30/07

CLOSED, STAYED

**U.S. District Court**  
**District of New Jersey [LIVE] (Trenton)**  
**CIVIL DOCKET FOR CASE #: 3:07-cv-00612-AET-JJH**

STATE OF NEW JERSEY et al v. UNITED STATES  
 ENVIRONMENTAL PROTECTION AGENCY et al  
 Assigned to: Judge Anne E. Thompson  
 Referred to: Magistrate Judge John J. Hughes  
 Cause: 42:7413(b) Clean Air Act

Date Filed: 02/06/2007  
 Date Terminated: 07/25/2007  
 Jury Demand: None  
 Nature of Suit: 893 Environmental Matters  
 Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
02/06/2007	<u>1</u>	COMPLAINT against UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, STEPHEN L. JOHNSON ( Filing fee \$ 350 receipt number 1339150.) , filed by STATE OF NEW JERSEY, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION. (Attachments: # <u>1</u> Exhibit A, Part 1# <u>2</u> Exhibit A, Part 2# <u>3</u> Exhibit B# <u>4</u> Exhibit C)(tp ) (Entered: 02/06/2007)
02/06/2007	<u>2</u>	Summons Issued as to UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, STEPHEN L. JOHNSON, U.S. Attorney (Due - 60 days) Mailed to attorney. (tp ) (Entered: 02/06/2007)
04/18/2007	<u>3</u>	NOTICE of Appearance by JESSICA O'DONNELL on behalf of UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, STEPHEN L. JOHNSON (Attachments: # <u>1</u> Certificate of Service)(O'DONNELL, JESSICA) (Entered: 04/18/2007)
04/18/2007	<u>4</u>	Letter from Jessica O'Donnell, on behalf of EPA, requesting extension of time. (O'DONNELL, JESSICA) (Entered: 04/18/2007)
04/23/2007	<u>5</u>	LETTER ORDER granting request by EPA for an extension of time to Answer. Signed by Judge Anne E. Thompson on 4/20/07. (ij, ) (Entered: 04/26/2007)
05/23/2007	<u>6</u>	Joint MOTION to Stay <i>All Proceedings for Sixty Days</i> by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, STEPHEN L. JOHNSON. (Attachments: # <u>1</u> Brief # <u>2</u> Certificate of Service # <u>3</u> Text of Proposed Order)(O'DONNELL, JESSICA) (Entered: 05/23/2007)
05/24/2007		Setting Deadlines as to <u>6</u> Joint MOTION to Stay <i>All Proceedings for Sixty Days</i> . Motion set for 6/18/2007 10:00 AM before Judge Anne E. Thompson. (PLEASE NOTE THAT PURSUANT TO FED. R. CIV. P. 78 AND LOCAL RULE 7.1(B)(4), NO ORAL ARGUMENT WILL BE HELD IN THIS MATTER AND PARTIES SHOULD NOT APPEAR UNLESS SPECIFICALLY DIRECTED TO DO SO BY THE COURT.) (ij, ) (Entered: 05/24/2007)
05/29/2007	<u>7</u>	ORDER granting <u>6</u> Joint Motion to Stay and directing parties to file a motion to govern further proceedings w/in 60 days Signed by Judge Anne E. Thompson on 5/25/2007. (ss, ) (Entered: 05/29/2007)
07/19/2007	<u>8</u>	MOTION to Dismiss <i>Voluntarily</i> by STATE OF NEW JERSEY, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION. (Attachments: # <u>1</u> Notice of Voluntary Dismissal# <u>2</u> Proposed Order# <u>3</u> Certificate of Service)(AUERBACHER, KEVIN) (Entered: 07/19/2007)
07/20/2007		Set Deadlines as to <u>8</u> MOTION to Dismiss <i>Voluntarily</i> . Motion Hearing set for 8/20/2007 10:00 AM in Trenton - Courtroom 4W before Judge Anne E. Thompson. (PLEASE NOTE THAT PURSUANT TO FED. R. CIV. P. 78 AND LOCAL RULE 7.1(B)(4), NO ORAL ARGUMENT WILL BE HELD IN THIS MATTER AND PARTIES SHOULD NOT APPEAR UNLESS SPECIFICALLY DIRECTED TO DO SO BY THE COURT.) (ck, ) (Entered: 07/20/2007)
07/25/2007	<u>9</u>	ORDER granting <u>8</u> Motion to Dismiss. Signed by Judge Anne E. Thompson on 7/24/07. (ij, ) (Entered: 07/25/2007)

01/17/2008	<u>10</u>	LETTER ORDER advising of there being no remaining issues in matter. Signed by Judge Anne E. Thompson on 1/17/08. (ij, ) (Entered: 01/22/2008)
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the above-captioned matter, including Plaintiff's claims for costs of litigation and reasonable attorneys' fees, without expensive and protracted litigation;

WHEREAS, the Parties have agreed to a settlement without admission of any issue of fact or law;

WHEREAS, by entering into this Decree, the Parties do not waive or limit any claim or defense, on any grounds, related to any final EPA action approving, disapproving, and/or modifying, revoking or terminating the Title V permit for the Weston Generating Station;

WHEREAS, the Parties consider this Decree to be an adequate and equitable resolution of all of the claims in the above-captioned matter; and

WHEREAS, the Court, by entering this Decree, finds that the Decree is fair, reasonable, in the public interest, and consistent with the Clean Air Act, 42 U.S.C. §§ 7401-7671q.

NOW THEREFORE, before the taking of testimony, without trial or determination of any issue of fact or law, and upon the consent of the Parties, it is hereby ordered, adjudged and decreed that:

1. EPA shall sign a response to Plaintiff's petition, pursuant to 42 U.S.C. § 7661d(b)(2), for the Weston Generating Station by December 19, 2007. Once EPA signs the response, EPA shall provide a copy of the response to the Plaintiff within five business (5) days.

2. By January 22, 2008, EPA shall deliver notice of such response to the Office of the Federal Register for prompt publication. Following such delivery to the Office of the Federal Register, EPA shall not take any step (other than as necessary to correct within 10 business days after submittal any typographical or other errors in form) to delay or otherwise interfere with publication of such notice in the Federal Register.

3. The United States shall pay \$4898.00 to the Plaintiff by electronic funds transfers to the account provided by Plaintiff's counsel.

4. The Parties may extend the deadline in Paragraph 1, or otherwise modify this Decree, by written stipulation executed by counsel for the Parties and filed with the Court.

5. Nothing in this Decree shall be construed to limit or modify the discretion accorded EPA by the Clean Air Act and by general principles of administrative law, including the discretion to alter, amend or revise any responses and/or final actions contemplated by this Decree. EPA's obligation to perform the action specified in Paragraphs 1 and 2 by the time specified therein does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

6. Nothing in this Decree shall be construed to confer upon the district court jurisdiction to review any decision, either procedural or substantive, to be made by EPA pursuant to this Decree. Nothing in this Decree shall be construed to confer upon the district court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals pursuant to sections 307(b)(1) and 505 of the Clean Air Act, 42 U.S.C. §§ 7607(b)(1), 7661d.

7. The obligations imposed upon EPA under this Decree can only be undertaken using appropriated funds. No provision of this Decree shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable federal law.

8. Plaintiff agrees that payment pursuant to Paragraph 3 shall be in complete settlement of all claims for litigation costs, including reasonable attorneys' fees, under any provision of law they have asserted or could have asserted in connection with the above-captioned matter up until the date of the filing of this consent order. Upon payment as provided in Paragraph 3, Plaintiff

discharges and covenants not to sue the United States, including EPA, for any claims regarding such fees and costs up until the date of filing of this consent order. The parties agree that Plaintiff reserves the right to seek additional attorney fees and costs incurred subsequent to the date of filing of this consent order to enforce or defend against efforts to modify this consent order.

9. Any notices required or provided for by this Decree shall be made in writing, via facsimile or other means, and sent to the following:

For Plaintiff:

David C. Bender  
Garvey, McNeil, & McGillivray, S.C.  
634 W. Main Street, Suite 101  
Madison, WI 53703  
Tel. (608)256-1003  
Fax. (608)256-0933  
Email: bender@gmmattorneys.com

For Defendant:

Mary Edgar  
Catherine Wannamaker  
United States Department of Justice  
Environment and Natural Resources Division  
Environmental Defense Section  
P.O. Box 23986  
Washington, DC 20004 -3986  
Tel: (202)514-9365  
Fax: (202)514-8865  
E-mail: catherine.wannamaker@usdoj.gov

Howard Hoffman  
Paul Versace  
Office of General Counsel  
U.S. Environmental Protection Agency  
Ariel Rios Bldg., MC 2377A  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460  
Fax: (202) 564-5603

E-mail: hoffman.howard@epa.gov

10. In the event of a dispute between the Parties concerning the interpretation or implementation of any aspect of this Decree, the disputing party shall provide the other Party with a written notice outlining the nature of the dispute and requesting informal negotiations. If the Parties cannot reach an agreed-upon resolution within five (5) business days after receipt of the notice, any party may move the Court to resolve the dispute.

11. Subject to the process set out in Paragraph 10,

(a) this Court shall retain jurisdiction over the above-captioned matter for the purpose of enabling the Parties to apply to the Court for any further orders that may be necessary to construe, implement or enforce compliance with the terms and conditions set forth in this Decree; and

(b) the Court may modify the obligations of this Decree upon motion by any Party to the Consent Decree pursuant to the Federal Rules of Civil Procedure.

12. No motion or other proceeding seeking to enforce this Decree or for contempt of Court shall be properly filed, unless the Plaintiff has followed the procedure set forth in Paragraph 10 and provided EPA with written notice received at least five business days before the filing of such motion or proceeding.

13. When EPA's obligations under Paragraphs 1, 2, and 3 have been completed, the above-captioned matter shall be dismissed with prejudice. EPA shall file the appropriate notice with the Court so that the Clerk may dismiss the case with prejudice.

14. The obligations of this Decree and this Court's jurisdiction over this case shall terminate upon completion of all requirements of this Decree.

15. The undersigned representatives of each Party certify that they are fully authorized by the Party that they represent to bind that Party to the terms of this Decree.

**COUNSEL FOR PLAINTIFF:**

Dated: November 6, 2007

Respectfully submitted,

\_\_\_\_\_  
/s/

David C. Bender  
Garvey, McNeil, & McGillivray, S.C.  
634 W. Main Street, Suite 101  
Madison, WI 53703  
Tel. (608)256-1003  
Fax. (608)256-0933  
Email: bender@gmmattorneys.com

**COUNSEL FOR DEFENDANT:**

Dated: November 6, 2007

Ronald J. Tenpas  
Acting Assistant Attorney General  
Environment & Natural Resources Division

/s/

Catherine Wannamaker  
United States Department of Justice  
Environment & Natural Resources Division  
Environmental Defense Section  
P.O. Box 23986  
Washington, DC 20004 -3986

Howard Hoffman  
Paul Versace  
Office of General Counsel  
U.S. Environmental Protection Agency  
Ariel Rios Bldg., MC 2377A  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2007

\_\_\_\_\_  
Ellen S. Huvelle  
U.S. District Judge

CLOSED, TYPE-E

**U.S. District Court  
District of Columbia (Washington, DC)  
CIVIL DOCKET FOR CASE #: 1:07-cv-01040-ESH**

SIERRA CLUB v. JOHNSON  
Assigned to: Judge Ellen S. Huvelle  
Cause: 42:7604 Clear Air Act (Emission Standards)

Date Filed: 06/11/2007  
Date Terminated: 11/07/2007  
Jury Demand: None  
Nature of Suit: 890 Other Statutory  
Actions  
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
06/11/2007	<u>1</u>	COMPLAINT against STEPHEN L. JOHNSON ( Filing fee \$ 350, receipt number 4616004818) filed by SIERRA CLUB. (Attachments: # <u>1</u> Civil Cover Sheet)(jf, ) (Entered: 06/14/2007)
06/11/2007		SUMMONS (3) Issued as to STEPHEN L. JOHNSON, U.S. Attorney and U.S. Attorney General (jf, ) (Entered: 06/14/2007)
06/14/2007	<u>2</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by SIERRA CLUB (Bender, David) (Entered: 06/14/2007)
06/14/2007	<u>3</u>	NOTICE of Appearance by David C. Bender on behalf of SIERRA CLUB (Bender, David) (Entered: 06/14/2007)
07/19/2007	<u>4</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on Attorney General. Date of Service Upon Attorney General 06/25/2007. (Bender, David) (Entered: 07/19/2007)
07/19/2007	<u>5</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the US Attorney. SIERRA CLUB served on 6/20/2007, answer due 8/20/2007 (Bender, David) (Entered: 07/19/2007)
07/19/2007	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to STEPHEN L. JOHNSON served on 6/20/2007, answer due 8/20/2007. (Bender, David) (Entered: 07/19/2007)
07/20/2007	<u>7</u>	MOTION for Summary Judgment , <i>Statement of Material Facts, and Points and Authorities in Support</i> by SIERRA CLUB (Attachments: # <u>1</u> Affidavit of Bruce Nilles# <u>2</u> Affidavit of Richard Wentzel# <u>3</u> Text of Proposed Order)(Bender, David) (Entered: 07/20/2007)
08/02/2007	<u>8</u>	NOTICE of Appearance by Catherine Wannamaker on behalf of STEPHEN L. JOHNSON (Wannamaker, Catherine) (Entered: 08/02/2007)
08/02/2007	<u>9</u>	Unopposed MOTION for Extension of Time to File Response/Reply to Plaintiff's Motion for Summary Judgment by STEPHEN L. JOHNSON (Attachments: # <u>1</u> Text of Proposed Order)(Wannamaker, Catherine) (Entered: 08/02/2007)
08/02/2007		MINUTE ORDER granting <u>9</u> Defendant's Unopposed Motion for Extension of Time to Respond to Plaintiff's Motion for Summary Judgment. Defendant shall file a response to plaintiff's motion for summary judgment on or before August 27, 2007. Signed by Judge Ellen S. Huvelle on 8/2/2007. (KF) (Entered: 08/02/2007)
08/02/2007		Set/Reset Deadlines: Response to Motion for Summary Judgment due by 8/27/2007. (gdf) (Entered: 08/02/2007)
08/17/2007	<u>10</u>	Joint MOTION to Stay <i>Proceedings</i> by STEPHEN L. JOHNSON (Attachments: # <u>1</u> Text of Proposed Order)(Wannamaker, Catherine) (Entered: 08/17/2007)



08/17/2007		MINUTE ORDER granting <u>10</u> the parties' Joint Motion to Stay All Proceedings. All proceedings in this case are hereby stayed until September 20, 2007. Signed by Judge Ellen S. Huvelle on 8/17/2007. (KF) (Entered: 08/17/2007)
09/19/2007	<u>11</u>	Joint MOTION to Continue <i>Stay of All Proceedings</i> by STEPHEN L. JOHNSON (Attachments: # <u>1</u> Text of Proposed Order)(Wannamaker, Catherine) (Entered: 09/19/2007)
09/19/2007		MINUTE ORDER granting <u>11</u> the Joint Motion to Continue Stay of All Proceedings. The parties shall file a stipulation of dismissal by noon on September 27, 2007. No further continuances will be granted. Signed by Judge Ellen S. Huvelle on 9/19/2007. (KF) (Entered: 09/19/2007)
09/20/2007	<u>12</u>	NOTICE of Lodging of Proposed Consent Decree by STEPHEN L. JOHNSON (Attachments: # <u>1</u> Consent Decree)(Wannamaker, Catherine) (Entered: 09/20/2007)
09/20/2007		MINUTE ORDER denying as moot <u>7</u> plaintiff's Motion for Summary Judgment. Signed by Judge Ellen S. Huvelle on 9/20/2007. (KF) (Entered: 09/20/2007)
11/06/2007	<u>13</u>	Unopposed MOTION to Enter Attached Consent Decree by STEPHEN L. JOHNSON (Attachments: # <u>1</u> )(Wannamaker, Catherine) (Entered: 11/06/2007)
11/07/2007	<u>14</u>	NOTICE OF CONSENT DECREE by SIERRA CLUB, STEPHEN L. JOHNSON. Approved by Judge Ellen Segal Huvelle on 11/6/07. (gdf) Modified on 11/8/2007 (nmw, ). (Entered: 11/07/2007)
12/20/2007	<u>15</u>	STIPULATION of Dismissal ( <i>Joint</i> ) by STEPHEN L. JOHNSON. (McDonough, Eileen) (Entered: 12/20/2007)

**SETTLEMENT AGREEMENT**  
**Attorneys' fees and costs of litigation**  
**Sierra Club v. United States EPA, No. 06-00663 (D.N.M.)**

WHEREAS, plaintiff Sierra Club filed a complaint, Case No. 06-00663 (D.N.M.), seeking to compel the United States Environmental Protection Agency ("EPA") to issue a final Federal Implementation Plan ("FIP") for the Four Corners Power Plant in New Mexico; and

WHEREAS, on May 7, 2007, EPA promulgated a final FIP; and

WHEREAS, Sierra Club seeks attorneys' fees and costs pursuant to Section 304 of the Clean Air Act, 42 U.S.C. § 7604(d); and

WHEREAS, in order to avoid unnecessary litigation, the parties wish to settle Sierra Club's claim for attorneys' fees and costs of litigation;

NOW, it is therefore agreed:

1. The United States agrees to pay Sierra Club the sum of \$14,360.00 in settlement of Sierra Club's claims for attorneys' fees and costs of litigation in the above-identified matter. Payment shall be made as soon as reasonably practicable via electronic funds transfer to counsel for Sierra Club, Reed Zars, in accordance with instructions to be provided by Sierra Club.

2. Any obligations of the United States to obligate or expend funds under this Settlement Agreement are subject to the availability of appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341. This Settlement Agreement shall not be construed to require the United States to obligate or pay funds in contravention of said Anti-Deficiency Act, 31 U.S.C. § 1341.

3. Sierra Club agrees that the payment of \$14,360.00 pursuant to Paragraph 1 constitutes full and final settlement of Sierra Club's claim for fees and costs incurred by Sierra

Club in the above-identified matter. Sierra Club releases the United States, including EPA, from any claims regarding such fees and costs upon receipt of payment. This settlement agreement shall not be interpreted to preclude any rights Sierra Club may have to secure payment of any costs or attorneys' fees it may incur enforcing this agreement.

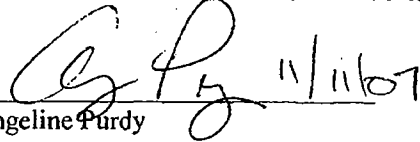
4. Upon receipt of the payment referred to in Paragraph 1 above, Sierra Club shall dismiss its complaint in the above-identified matter.

5. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to enter into this Settlement Agreement.

SO AGREED:


FOR THE UNITED STATES:

RONALD J. TENPAS  
Acting Assistant Attorney General  
Environment & Natural Resources Division

  
Angeline Purdy  
Trial Attorney  
United States Department of Justice  
Environment & Natural Resources Division  
Environmental Defense Section  
P.O. Box 23986  
Washington, D.C. 20026-3986

FOR SIERRA CLUB:

REED ZARS

  
Reed Zars  
Attorney at Law  
910 Kearney Street  
Laramie, WY 82070

CLOSED, REFER, STAY

**U.S. District Court**  
**District of New Mexico – Version 3.2.2 (Santa Fe)**  
**CIVIL DOCKET FOR CASE #: 6:06-cv-00663-BB-LFG**

Sierra Club v. US Environmental  
Assigned to: District Judge Bruce D. Black  
Referred to: Magistrate Judge Lorenzo F. Garcia  
Demand: \$0  
Cause: 42:7413(b) Clean Air Act

Date Filed: 07/26/2006  
Date Terminated: 04/22/2008  
Jury Demand: Both  
Nature of Suit: 893 Environmental Matters  
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
07/26/2006	<u>1</u>	COMPLAINT for civil rights (3 Summons(es) issued) (referred to Chief Magistrate Lorenzo F. Garcia) (eh) (Entered: 07/26/2006)
07/26/2006		FILING FEE PAID: on 7/26/06 in the amount of \$350.00, receipt #: 81802. (eh) (Entered: 07/26/2006)
08/29/2006	<u>2</u>	RETURN OF SERVICE executed upon U.S. Attorney, Attorney General and EPA on 8/29/06 * (sl) (Entered: 08/29/2006)
09/18/2006	<u>3</u>	MOTION by intervenor Arizona Public Svc to intervene as a deft (sl) (Entered: 09/19/2006)
09/18/2006	<u>4</u>	ANSWER [1-1] by intervenor Arizona Public Service (sl) (Entered: 09/19/2006)
09/18/2006	<u>5</u>	MEMORANDUM by intervenor Arizona Public Svc in support of motion to intervene as a deft [3-1] (sl) (Entered: 09/19/2006)
09/19/2006	<u>6</u>	ERRATA by intervenor Arizona Public Svc to motion to intervene [3-1] (sl) (Entered: 09/20/2006)
10/05/2006	<u>7</u>	MOTION by defendant US Environmental to extend time to answer * (sl) (Entered: 10/05/2006)
10/05/2006	<u>8</u>	INITIAL SCHEDULING ORDER by Chief Magistrate Lorenzo F. Garcia Rule 16 scheduling conference set for 12/5/06 at 9:00 am; provisional discovery plan and IPTR due on 12/1/06 (cc: all counsel*) (sl) (Entered: 10/05/2006)
10/10/2006	<u>9</u>	ORDER by District Judge Bruce D. Black granting deft's motion to extend time to answer [7-1] until 11/6/06 (cc: all counsel) (seal) (Entered: 10/10/2006)
11/06/2006	<u>10</u>	UNOPPOSED MOTION by deft for an additional two-week extension of time to answer * (ln) (Entered: 11/07/2006)
11/08/2006	<u>11</u>	ORDER by District Judge Bruce D. Black granting deft's mtn for an additional two-week extension of time to answer until 11/20/06 [10-1] (cc: all counsel) (td) (Entered: 11/08/2006)
11/20/2006	<u>12</u>	MOTION by defendant to extend deadline and to strike deadline in scheduling order * (sl) (Entered: 11/20/2006)
11/22/2006	<u>13</u>	ORDER by District Judge Bruce D. Black granting Arizona Public Service's motion to intervene as a deft [3-1] (cc: all counsel*) (sl) (Entered: 11/22/2006)
11/27/2006	<u>14</u>	SUPPLEMENT by defendant re motion to extend deadline [12-1] and to strike deadline in scheduling order [12-2] * (sl) (Entered: 11/27/2006)
11/30/2006	<u>15</u>	ORDER by Chief Magistrate Lorenzo F. Garcia granting deft's motion to extend deadline [12-1] until 12/15/06 and to strike deadline in scheduling order [12-2] as further described herein (cc: all counsel) (sl) (Entered: 11/30/2006)
12/13/2006	<u>16</u>	NOTICE by defendant of lodging of proposed consent decree and motion for stay* (sl) (Entered: 12/13/2006)

12/28/2006	<u>17</u>	ORDER by District Judge Bruce D. Black granting deft EPA's mtn for stay in its obligation to respond to the Sierra Club's complaint pending entry of the proposed Consent Decree [16-1] (cc: all counsel) (mjr) (Entered: 12/28/2006)
05/31/2007	<u>18</u>	Joint MOTION for Extension of Time to File <i>Answer and fee motion, and notice of withdrawal of consent decree</i> by United States Environmental Protection Agency. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Proposed Order)(Purdy, Angeline) (Entered: 05/31/2007)
07/30/2007	<u>19</u>	Joint MOTION to Stay by Sierra Club. (Attachments: # <u>1</u> Proposed Order)(Zars, Reed) (Entered: 07/30/2007)
07/31/2007	<u>20</u>	NOTICE OF DEFICIENCY re <u>19</u> Joint MOTION to Stay (td) (Entered: 07/31/2007)
07/31/2007	<u>21</u>	Corrected MOTION to Stay re <u>20</u> Notice of Deficiency by Sierra Club. (Zars, Reed) (Entered: 07/31/2007)
08/06/2007	<u>22</u>	ORDER by Judge Bruce D. Black granting Motion to Stay EPA Answer and to Preserve Plaintiff's Fee Claim(emr) (Entered: 08/06/2007)
09/25/2007	<u>23</u>	THIRD Joint MOTION to Extend (other) <i>stay of EPA answer and to preserve plaintiff's fee claim</i> by United States Environmental Protection Agency. (Attachments: # <u>1</u> Proposed Order)(Purdy, Angeline) Modified text on 9/26/2007. (mr) (Entered: 09/25/2007)
09/26/2007	<u>24</u>	ORDER by Judge Bruce D. Black granting <u>23</u> Third Joint Motion to Stay EPA Answer and to Preserve Plaintiff's Fee Claim – this matter continued an additional 60 days, until November 28, 2007.(emr) (Entered: 09/26/2007)
11/27/2007	<u>25</u>	Joint MOTION to Stay re <u>24</u> Order on Motion to Extend (other) by Sierra Club. (Attachments: # <u>1</u> Proposed Order)(Zars, Reed) (Entered: 11/27/2007)
12/04/2007	<u>26</u>	ORDER by Judge Bruce D. Black granting <u>25</u> Motion to Stay. THIS IS A TEXT ONLY ENTRY. NO OTHER DOCUMENTS ARE ATTACHED. (emr) (Entered: 12/04/2007)
04/10/2008	<u>27</u>	STIPULATION of Dismissal by Sierra Club, United States Environmental Protection Agency (Attachments: # <u>1</u> )(Zars, Reed) (Entered: 04/10/2008)
04/22/2008	<u>28</u>	ORDER DISMISSING CASE by Judge Bruce D. Black. (emr) (Entered: 04/22/2008)

**SETTLEMENT AGREEMENT  
FOR ATTORNEYS' FEES AND COSTS**

Plaintiff Sierra Club and Defendant Stephen L. Johnson, in his official capacity as Administrator, United States Environmental Protection Agency ("EPA"), enter into the following agreement to resolve Plaintiff's claims for attorneys' fees and costs in the matter of Sierra Club v. Stephen L. Johnson, Civ. No. Civ. No. 1:07CV00414 (RWR) (D.D.C.).

WHEREAS, Plaintiff filed this action pursuant to section 304(a)(2) of the Clean Air Act ("CAA"), 42 U.S.C. § 7604(a)(2), alleging that Defendant failed to perform a non-discretionary duty under CAA § 505(b)(2), 42 U.S.C. §§ 7661d(b)(2), to grant or deny a petition submitted by the Sierra Club requesting that EPA object to a CAA permit issued by appropriate state agencies to the Hugh L. Spurlock Station ("Spurlock") operated by the East Kentucky Power Cooperative, Inc.;

WHEREAS, the parties entered into a prior Consent Decree, pursuant to which EPA took action on Plaintiff's permit petition on August 30, 2007;

WHEREAS, the parties now wish to settle Plaintiff's claim for costs of litigation, including attorneys' fees, in order to avoid unnecessary litigation, and without any admission of fact or law;

NOW THEREFORE, it is agreed:

1. The United States shall pay, as soon as reasonably practicable, \$6,500, to the Sierra Club, by electronic funds transfer in accordance with instructions provided to the undersigned defense counsel by Plaintiff's counsel.
2. Any obligations of the United States to expend funds under this Settlement Agreement are subject to the availability of appropriations in accordance with the Anti-

Deficiency Act, 31U.S.C. § 1341. This Settlement Agreement shall not be construed to require the United States to obligate or pay funds in contravention of the said Anti-Deficiency Act, 31 U.S.C. § 1341.

3. Plaintiff agrees that payment pursuant to Paragraph 1 within 90 days of the date on which the Agreement has been executed by both parties (or after 90 days if Plaintiff accepts payment after that date) will constitute full and final payment of costs of litigation (including reasonable attorney fees) incurred by Plaintiff in connection with this matter. Upon payment within 90 days of the date on which the Agreement has been executed (or upon payment after 90 days if Plaintiffs accept payment), Plaintiff releases the United States, including EPA, from any claims regarding such fees and costs in connection with this matter.

4. In the event that the United States fails to pay the sum specified in Paragraph 1 of this Agreement within 90 days of the date on which the Agreement has been executed by both parties, Plaintiff may file a motion with the Court for their costs of litigation (including reasonable attorney fees). The parties agree that in litigation over such fee application, they will not disclose to the Court the amount agreed upon in paragraph 1, and that the United States reserves any defenses it may have to a fee application.

5. Within 10 days of the date on which the Agreement has been executed by both parties, Plaintiff shall file a motion to dismiss this action. The dismissal shall be with prejudice, except that Plaintiff may reserve the ability to file a motion for costs of litigation (including reasonable attorney fees), in the event that the United States fails to pay the sum specified in Paragraph 1 of this Agreement within 90 days of the date on which the Agreement has been executed by both parties.

6. The undersigned representatives of the parties certify that they are fully authorized by the party or parties they represent to enter into and execute the terms and conditions of the settlement agreement. By signature below, all parties consent to this settlement agreement.

SO AGREED:

FOR PLAINTIFF



DAVID C. BENDER  
Garvey, McNeil, & McGillivray, S.C.  
634 W. Main Street, Suite 101  
Madison, WI 53703  
Tel: (608) 256-1003  
Fax: (608) 256-0933  
bender@gmmattorneys.com

ROBERT UKEILEY  
Law Office of Robert Ukeiley  
435R Chestnut Street  
Berea, KY 40403  
Tel: (859) 986-5402  
Fax: (866) 618-1017  
rukeiley@igc.org

DATED: 1. 23. 08

FOR DEFENDANT

RONALD J. TENPAS  
Assistant Attorney General  
Environment & Natural Resources Division



MARY WHITTLE  
Trial Attorney  
United States Department of Justice  
Environmental Defense Section  
P.O. Box 23986  
Washington, D.C. 20026-3986  
Tel: (202) 514-0286  
Fax: (202) 514-8865



mary.whittle@usdoj.gov

DATED: 1-24-08

CLOSED, TYPE-C

**U.S. District Court  
District of Columbia (Washington, DC)  
CIVIL DOCKET FOR CASE #: 1:07-cv-00414-RWR**

SIERRA CLUB v. JOHNSON  
Assigned to: Judge Richard W. Roberts  
Cause: 33:1365 Environmental Matters

Date Filed: 02/28/2007  
Date Terminated: 07/09/2007  
Jury Demand: None  
Nature of Suit: 893 Environmental Matters  
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
02/28/2007	<u>1</u>	COMPLAINT against STEPHEN L. JOHNSON ( Filing fee \$ 350 receipt number 4616002632)filed by SIERRA CLUB. (Attachments: # <u>1</u> Civil Cover Sheet)(jf, ) (Entered: 03/02/2007)
02/28/2007		SUMMONS (3) Issued as to STEPHEN L. JOHNSON, U.S. Attorney and U.S. Attorney General (jf, ) (Entered: 03/02/2007)
02/28/2007	<u>2</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by SIERRA CLUB (jf, ) (Entered: 03/02/2007)
03/13/2007	<u>3</u>	NOTICE of Attorney Appearance by SIERRA CLUB (Bender, David) (Entered: 03/13/2007)
04/03/2007	<u>4</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to STEPHEN L. JOHNSON served on 3/22/2007, answer due 5/21/2007. (Ukeiley, Robert) (Entered: 04/03/2007)
04/03/2007	<u>5</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the US Attorney. (Ukeiley, Robert) (Entered: 04/03/2007)
04/03/2007	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on Attorney General. Date of Service Upon Attorney General 03/22/2007. (Ukeiley, Robert) (Entered: 04/03/2007)
04/12/2007	<u>7</u>	FIRST AMENDED COMPLAINT against STEPHEN L. JOHNSON filed by SIERRA CLUB.(nmw, ) (Entered: 04/12/2007)
05/15/2007	<u>8</u>	Unopposed MOTION for Extension of Time to File Answer re <u>7</u> Amended Complaint by STEPHEN L. JOHNSON (Whittle, Mary) (Entered: 05/15/2007)
05/21/2007		MINUTE ORDER: It is hereby ORDERED that defendant's unopposed motion <u>8</u> for extension of time to answer be, and hereby is, GRANTED. STEPHEN L. JOHNSON's answer is due 6/25/2007. Issued by Judge Richard W. Roberts on 5/21/2007. (EHS) (Entered: 05/21/2007)
05/21/2007		Set/Reset Deadlines: Answer due by 6/25/2007. (lin, ) (Entered: 05/21/2007)
06/20/2007	<u>9</u>	Unopposed MOTION for Extension of Time to File Answer by STEPHEN L. JOHNSON (Whittle, Mary) (Entered: 06/20/2007)
06/25/2007		MINUTE ORDER: It is hereby ORDERED that defendant's motion <u>9</u> for extension of time to answer be, and hereby is, GRANTED. Answer is due 7/2/2007. Issued by Judge Richard W. Roberts on 6/25/2007. (EHS) (Entered: 06/25/2007)
06/29/2007	<u>10</u>	ENTERED IN ERROR.....Joint MOTION to Approve Consent Judgment by STEPHEN L. JOHNSON (Whittle, Mary) Modified on 7/2/2007 (jf, ). (Entered: 06/29/2007)

07/02/2007		NOTICE OF CORRECTED DOCKET ENTRY: Document No. re <u>10</u> Joint MOTION to Approve Consent Judgment was entered in error and at the direction of counsel and will refile said pleading with corrected document. (jf, ) (Entered: 07/02/2007)
07/02/2007	<u>11</u>	NOTICE of Lodging of Proposed Consent Decree by STEPHEN L. JOHNSON (Attachments: # <u>1</u> Exhibit Proposed Consent Decree)(Whittle, Mary) (Entered: 07/02/2007)
07/05/2007		MINUTE ORDER: It is hereby ORDERED that in light of the parties' proposed settlement of this action <u>11</u> the Clerk of Court is directed to ADMINISTRATIVELY CLOSE this case, and parties are DIRECTED to file a joint status report November 1, 2007. Issued by Judge Richard W. Roberts on 07/05/07. (EHS) (Entered: 07/05/2007)
07/09/2007		Set/Reset Deadlines: Status Report due by 11/1/2007. (zlin, ) (Entered: 07/09/2007)
10/23/2007	<u>12</u>	Joint MOTION Enter Consent Decree by STEPHEN L. JOHNSON (Attachments: # <u>1</u> Consent Decree)(Whittle, Mary) (Entered: 10/23/2007)
10/24/2007		MINUTE ORDER: It is hereby ORDERED that the parties joint motion <u>12</u> to enter consent decree be, and hereby is, GRANTED. The signed consent decree, signed this day, will be entered in a separate docket entry. Issued by Judge Richard W. Roberts on 10/24/2007. (EHS) (Entered: 10/24/2007)
10/25/2007	<u>13</u>	CONSENT DECREE Signed by Judge Richard W. Roberts on 10/24/2007. (mm) (Entered: 10/26/2007)
11/11/2007	<u>14</u>	ENTERED IN ERROR.....STIPULATION to extend time to petition for fees by SIERRA CLUB. (Bender, David) Modified on 11/13/2007 (jf, ). (Entered: 11/11/2007)
11/13/2007		NOTICE OF CORRECTED DOCKET ENTRY: Document No. re <u>14</u> Stipulation was entered in error and counsel was instructed to refile said pleading. (jf, ) (Entered: 11/13/2007)
11/13/2007	<u>15</u>	STIPULATION to extend deadline to petition for fees by SIERRA CLUB. (Bender, David) (Entered: 11/13/2007)
11/16/2007	<u>16</u>	STIPULATION AND ORDER TO AMEND CONSENT DECREE. Signed by Judge Richard W. Roberts on 11/14/07. (lin, ) (Entered: 11/16/2007)

### SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs Center for Biological Diversity, Valley Watch, Inc., Preston Forsythe, Tina Johnson and Jeremy Nichols filed Civil Action No. 05-1814 (D.D.C.) (hereinafter referred to as "*CBD v. EPA*") against Stephen L. Johnson, Administrator, United States Environmental Protection Agency ("EPA"), pursuant to section 304(a)(2) of the Clean Air Act ("CAA"), 42 U.S.C. § 7604(a)(2), alleging that EPA failed to perform mandatory duties pursuant to CAA § 109(d)(1) to complete another cycle of review, revision, and promulgation actions for nitrogen dioxide, oxides of nitrogen and sulfur oxides;

WHEREAS, Plaintiffs' claims (other than claims for costs of litigation, including attorneys' fees) in *CBD v. EPA* were resolved by a consent decree entered by the Court on November 19, 2007;

WHEREAS, Plaintiffs and EPA (collectively "the Parties") wish to effectuate a settlement of the claims for costs of litigation, including attorneys' fees, in *CBD v. EPA* without expensive and protracted litigation and without any admission of fact or law;

NOW THEREFORE, the Parties agree as follows:

1. The United States shall pay, as soon as reasonably practicable, \$55,145 to Plaintiffs' counsel, Robert Ukeiley, P.S.C., by electronic funds transfer in accordance with instructions provided to Defense Counsel by Plaintiffs' counsel.
2. Any obligations of the United States to expend funds under this Settlement Agreement are subject to the availability of appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341. This Settlement Agreement shall not be construed to require the United States to obligate or pay funds in contravention of the said Anti-Deficiency Act, 31 U.S.C. § 1341.

3. Plaintiffs agree that payment pursuant to Paragraph 1 within 90 days of the date on which the Agreement has been executed by both parties (or after 90 days if Plaintiffs accept payment after that date) will constitute full and final payment of costs of litigation (including reasonable attorney fees) incurred by Plaintiffs in *CBD v. EPA* prior to the date that this Agreement has been signed by both parties. Upon payment within 90 days of the date on which the Agreement has been executed (or upon payment after 90 days if Plaintiffs accept payment), Plaintiffs release the United States, including EPA, from any claims regarding such fees and costs.


4. In the event that the United States fails to pay the sum specified in Paragraph 1 of this Agreement within 90 days of the date on which the Agreement has been executed by both parties, Plaintiffs may file a motion with the Court for their costs of litigation (including reasonable attorney fees). The parties agree that in litigation over such fee application, they will not disclose to the Court the amount agreed upon in paragraph 1, and that the United States reserves any defenses it may have to a fee application.

5. The undersigned representatives of the parties certify that they are fully authorized by the party or parties they represent to enter into and execute the terms and conditions of the settlement agreement. By signature below, all parties consent to this settlement agreement.

SO AGREED:

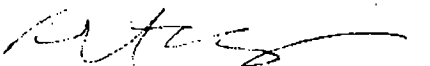
FOR THE DEFENDANT

RONALD J. TENPAS  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

  
EILEEN T. MCDONOUGH  
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Dated: 1/22/08

FOR THE PLAINTIFFS

  
ROBERT UKEILEY  
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Berea, KY 40403  
(859) 986-5402  
(866) 618-1017 (fax)  
Rukeiley@igc.org

Dated: 1/25/08

CLOSED, TYPE-C

**U.S. District Court  
District of Columbia (Washington, DC)  
CIVIL DOCKET FOR CASE #: 1:05-cv-01814-LFO**

CENTER FOR BIOLOGICAL DIVERSITY v. JOHNSON

Assigned to: Judge Louis F. Oberdorfer

Case: 1:03-cv-00778-ESH

Cause: 33:1365 Environmental Matters

Date Filed: 09/12/2005

Date Terminated: 11/19/2007

Jury Demand: None

Nature of Suit: 893 Environmental Matters

Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
09/12/2005	<u>1</u>	COMPLAINT against STEPHEN L. JOHNSON (Filing fee \$ 250) filed by CENTER FOR BIOLOGICAL DIVERSITY.(jf, ) . (Entered: 09/14/2005)
09/12/2005		SUMMONS (3) Issued as to STEPHEN L. JOHNSON, U.S. Attorney and U.S. Attorney General (jf, ) . (Entered: 09/14/2005)
09/12/2005	<u>2</u>	NOTICE OF RELATED CASE by CENTER FOR BIOLOGICAL DIVERSITY. Case related to Case No. 03-778. (jf, ) (Entered: 09/14/2005)
09/12/2005	<u>3</u>	LCvR 7.1 - CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by CENTER FOR BIOLOGICAL DIVERSITY (jf, ) (Entered: 09/14/2005)
09/15/2005		Case Reassigned to Judge John G. Penn. Judge Ellen S. Huvelle no longer assigned to the case. (jf, ) (Entered: 09/16/2005)
09/21/2005	<u>4</u>	NOTICE of Appearance by Eileen T. McDonough on behalf of all defendants (McDonough, Eileen) (Entered: 09/21/2005)
10/04/2005	<u>5</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the US Attorney. STEPHEN L. JOHNSON served on 9/26/2005, answer due 11/25/2005 (Ukeiley, Robert) (Entered: 10/04/2005)
10/04/2005	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to STEPHEN L. JOHNSON served on 9/26/2005, answer due 11/25/2005 (Ukeiley, Robert) Modified on 10/5/2005 (rje, ). (Entered: 10/04/2005)
10/04/2005	<u>7</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on Attorney General. Date of Service Upon Attorney General 09/26/05. (Ukeiley, Robert) (Entered: 10/04/2005)
11/23/2005	<u>8</u>	Consent MOTION for Extension of Time to File Answer re <u>1</u> Complaint by STEPHEN L. JOHNSON. (Attachments: # <u>1</u> Text of Proposed Order)(McDonough, Eileen) (Entered: 11/23/2005)
11/29/2005	<u>9</u>	ORDER granting <u>8</u> Motion for Extension of Time. Defendant's answer due December 2, 2005. Signed by Judge John Garrett Penn on November 29, 2005.(lcjgp1) (Entered: 11/29/2005)
12/02/2005	<u>10</u>	ANSWER to Complaint by STEPHEN L. JOHNSON.(McDonough, Eileen) (Entered: 12/02/2005)
12/20/2005	<u>11</u>	ORDER for Initial Scheduling Hearing on January 24, 2006 at 10:30 A.M. Parties to submit Joint Statement on or before January 17, 2006. See order for details. Signed by Judge John Garrett Penn on December 20, 2005. (lcjgp1) (Entered: 12/20/2005)
01/04/2006	<u>12</u>	Unopposed MOTION Reschedule Initial Scheduling Conference and attend by telephone by CENTER FOR BIOLOGICAL DIVERSITY. (Attachments: # <u>1</u> Text of Proposed Order)(Ukeiley, Robert) (Entered: 01/04/2006)
01/04/2006	<u>13</u>	ORDER granting <u>12</u> Unopposed Motion to Reschedule the Initial Scheduling Conference and Attend by Telephone. See Order for details. Signed by Judge John Garrett Penn on January 4, 2006.(lcpenn2) (Entered: 01/04/2006)

01/05/2006		Minute Entry : Initial Status Conference reset for 2/1/2006 at 10:00 AM in Courtroom 15 before Judge John Garrett Penn. (rje) Modified on 1/5/2006 (rje, ). (Entered: 01/05/2006)
01/17/2006	<u>14</u>	MEET AND CONFER STATEMENT. (Ukeiley, Robert) (Entered: 01/17/2006)
01/31/2006	<u>15</u>	ORDER cancelling initial scheduling conference and setting pleading amendment and dispositive motion deadlines. See order for details. Signed by Judge John Garrett Penn on January 31, 2006.(lcjgp1) (Entered: 01/31/2006)
02/01/2006		Set/Reset Deadlines: Plaintiff's Amended complaint due by 2/8/2006. (rje) (Entered: 02/01/2006)
02/06/2006	<u>16</u>	NOTICE of written consent to file amended complaint by CENTER FOR BIOLOGICAL DIVERSITY (Ukeiley, Robert) (Entered: 02/06/2006)
02/06/2006	<u>17</u>	LCvR 7.1 – CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests for Valley Watch, Inc by all plaintiffs (Ukeiley, Robert) (Entered: 02/06/2006)
02/06/2006	<u>18</u>	FIRST AMENDED COMPLAINT For Injunctive and Declaratory Relief against STEPHEN L. JOHNSON filed by CENTER FOR BIOLOGICAL DIVERSITY, VALLEY WATCH, INC., PRESTON FORSYTHE, TINA JOHNSON, JEREMY NICHOLS.(tg, ) (Entered: 02/07/2006)
02/23/2006	<u>19</u>	ANSWER to <u>18</u> Complaint (First Amended) by STEPHEN L. JOHNSON.(McDonough, Eileen) Modified on 2/24/2006 (nmw, ). (Entered: 02/23/2006)
04/03/2006	<u>20</u>	MOTION for Summary Judgment by CENTER FOR BIOLOGICAL DIVERSITY, VALLEY WATCH, INC., PRESTON FORSYTHE, TINA JOHNSON, JEREMY NICHOLS. (Attachments: # <u>1</u> Affidavit of Erik Johnson# <u>2</u> Affidavit of Jeremy Nichols# <u>3</u> Affidavit of Peter Galvin# <u>4</u> Affidavit of Preston Forsythe# <u>5</u> Affidavit of Sherry Giles# <u>6</u> Affidavit of Tina Johnson# <u>7</u> Affidavit of Todd Schulke# <u>8</u> Exhibit 1# <u>9</u> Statement of Facts # <u>10</u> Text of Proposed Order)(Ukeiley, Robert) (Entered: 04/03/2006)
04/19/2006	<u>21</u>	Consent MOTION for Extension of Time to File Response/Reply as to <u>20</u> MOTION for Summary Judgment by STEPHEN L. JOHNSON. (Attachments: # <u>1</u> Text of Proposed Order)(McDonough, Eileen) (Entered: 04/19/2006)
04/25/2006		MINUTE ORDER granting Defendant's Consent Motion for Extension of Time <u>21</u> . Defendant's response to Plaintiff's Motion for Summary Judgment <u>20</u> due on or before May 31, 2006. Signed by Judge John Garrett Penn on April 25, 2006. (lcjgp1) (Entered: 04/25/2006)
05/31/2006	<u>22</u>	Memorandum in opposition to re <u>20</u> MOTION for Summary Judgment filed by STEPHEN L. JOHNSON. (Attachments: # <u>1</u> Exhibit Exhibit 1; Page Declaration# <u>2</u> Exhibit Exhibit 2; Part 1; Workgroup Recommendations# <u>3</u> Exhibit Exhibit 2; Part 2: Attachments to Workgroup Recommendations# <u>4</u> Exhibit Exhibit 3; Grant Declaration# <u>5</u> Text of Proposed Order)(McDonough, Eileen) (Entered: 05/31/2006)
05/31/2006	<u>23</u>	MOTION for Summary Judgment by STEPHEN L. JOHNSON. (Attachments: # <u>1</u> Memorandum in Support of Cross-motion for Summary Judgment and In Opposition to Plaintiffs' Motion# <u>2</u> Exhibit 1; Page Declaration# <u>3</u> Exhibit 2; Part 1 Workgroup Recommendation# <u>4</u> Exhibit 2; Part 2; Attachments to Workgroup Recommendations# <u>5</u> Exhibit 3 Grant Declaration# <u>6</u> Statement of Facts # <u>7</u> Text of Proposed Order)(McDonough, Eileen) (Entered: 05/31/2006)
06/01/2006	<u>24</u>	ADDITIONAL ATTACHMENT Response to Plaintiff's Statement of Facts by STEPHEN L. JOHNSON, <u>22</u> Memorandum in Opposition, filed by STEPHEN L. JOHNSON,. (McDonough, Eileen) (Entered: 06/01/2006)
07/10/2006	<u>25</u>	REPLY to opposition to motion re <u>20</u> MOTION for Summary Judgment filed by CENTER FOR BIOLOGICAL DIVERSITY, VALLEY WATCH, INC., PRESTON FORSYTHE, TINA JOHNSON, JEREMY NICHOLS. (Attachments: # <u>1</u> Exhibit 1# <u>2</u> Exhibit 2# <u>3</u> Exhibit 3)(Ukeiley, Robert) (Entered: 07/10/2006)



07/17/2006	<u>26</u>	MOTION for Extension of Time to File Response/Reply as to <u>23</u> MOTION for Summary Judgment ( <i>Reply in Support of Motion for Summary Judgment</i> ) by STEPHEN L. JOHNSON. (Attachments: # <u>1</u> Text of Proposed Order)(McDonough, Eileen) (Entered: 07/17/2006)
07/18/2006	<u>27</u>	Memorandum in opposition to re <u>26</u> MOTION for Extension of Time to File Response/Reply as to <u>23</u> MOTION for Summary Judgment ( <i>Reply in Support of Motion for Summary Judgment</i> ) filed by CENTER FOR BIOLOGICAL DIVERSITY, VALLEY WATCH, INC., PRESTON FORSYTHE, TINA JOHNSON, JEREMY NICHOLS. (Attachments: # <u>1</u> Exhibit 1# <u>2</u> Exhibit 1# <u>3</u> Text of Proposed Order)(Ukeiley, Robert) (Entered: 07/18/2006)
07/20/2006	<u>28</u>	ORDER granting in part and denying in part nunc pro tunc Defendant's <u>26</u> Motion for Extension of Time. Defendant's reply due July 31, 2006. See order for details. Signed by Judge John Garrett Penn on July 20, 2006. (lcjgp1) Additional attachment(s) added on 7/20/2006 (lcjgp1, ). (Entered: 07/20/2006)
07/31/2006	<u>29</u>	REPLY to opposition to motion re <u>23</u> MOTION for Summary Judgment filed by STEPHEN L. JOHNSON. (Attachments: # <u>1</u> Exhibit)(McDonough, Eileen) (Entered: 07/31/2006)
10/17/2006	<u>30</u>	MOTION for Leave to File <i>Supplemental Declaration</i> by STEPHEN L. JOHNSON. (Attachments: # <u>1</u> Exhibit Supplemental Declaration of Steven Page# <u>2</u> Text of Proposed Order)(McDonough, Eileen) (Entered: 10/17/2006)
10/24/2006	<u>31</u>	RESPONSE to <u>30</u> Motion for Leave to File <i>Supplemental Declaration</i> filed by CENTER FOR BIOLOGICAL DIVERSITY, VALLEY WATCH, INC., PRESTON FORSYTHE, TINA JOHNSON, JEREMY NICHOLS. (Ukeiley, Robert) Modified on 10/25/2006 (tg, ). (Entered: 10/24/2006)
11/13/2006	<u>32</u>	MOTION to Expedite Review by CENTER FOR BIOLOGICAL DIVERSITY, VALLEY WATCH, INC., PRESTON FORSYTHE, TINA JOHNSON, JEREMY NICHOLS. (Attachments: # <u>1</u> Text of Proposed Order)(Ukeiley, Robert) (Entered: 11/13/2006)
11/28/2006	<u>33</u>	NOTIFICATION OF SUPPLEMENTAL AUTHORITY by CENTER FOR BIOLOGICAL DIVERSITY, VALLEY WATCH, INC., PRESTON FORSYTHE, TINA JOHNSON, JEREMY NICHOLS (Ukeiley, Robert) (Entered: 11/28/2006)
02/13/2007	<u>34</u>	NOTICE of Change of Address by Robert Steven Ukeiley (Ukeiley, Robert) (Entered: 02/13/2007)
07/27/2007	<u>35</u>	Case Reassigned to Judge Louis F. Oberdorfer. Judge John Garrett Penn no longer assigned to the case. (jeb, ) (Entered: 07/27/2007)
07/27/2007		MINUTE ORDER Setting Hearing on dkt # <u>20</u> MOTION for Summary Judgment and dkt # <u>23</u> MOTION for Summary Judgment. This case has been reassigned to the undersigned for ruling on the pending motions for summary judgment. A hearing on those motions will be held at 10:30 a.m. on Wednesday, August 22, 2007 in Courtroom No. 3. Given the passage of time since the filing of those motions, the parties shall file supplemental briefs on or before August 10, 2007, bringing to the court's attention relevant developments in the facts, law, or relief sought. Signed by Judge Louis F. Oberdorfer on 07/27/07. (esp) (Entered: 07/27/2007)
07/27/2007		Set Deadlines/Hearings: Supplemental Briefs due by 8/10/2007. Motion Hearing set for 8/22/2007 at 10:30 AM in Courtroom 3 before Judge Louis F. Oberdorfer. (cp, ) (Entered: 07/27/2007)
08/10/2007	<u>36</u>	SUPPLEMENTAL MEMORANDUM to re <u>20</u> MOTION for Summary Judgment filed by CENTER FOR BIOLOGICAL DIVERSITY, VALLEY WATCH, INC., PRESTON FORSYTHE, TINA JOHNSON, JEREMY NICHOLS. (Ukeiley, Robert) (Entered: 08/10/2007)
08/10/2007	<u>37</u>	SUPPLEMENTAL MEMORANDUM to re <u>23</u> MOTION for Summary Judgment filed by STEPHEN L. JOHNSON. (Attachments: # <u>1</u> Exhibit Declaration of Stephen Page# <u>2</u> Page Attachment A# <u>3</u> Page Attachment B# <u>4</u> Page Attachment C)(McDonough, Eileen) (Entered: 08/10/2007)

08/20/2007		MINUTE ORDER. The hearing scheduled for Wednesday, August 22, 2007 is CANCELLED. The Parties have represented to the court that they have reached a settlement resolving this case. The Parties shall lodge a proposed consent decree with the court on or before Wednesday, September 5, 2007. Signed by Judge Louis F. Oberdorfer on 08/20/07. (esp) (Entered: 08/20/2007)
09/05/2007	<u>38</u>	NOTICE of Lodging of Consent Decree Pursuant to CAA Section 113(g) by STEPHEN L. JOHNSON (Attachments: # <u>1</u> Exhibit Consent Decree)(McDonough, Eileen) (Entered: 09/05/2007)
11/13/2007	<u>39</u>	Joint MOTION for Judgment Entry of Consent Decree by STEPHEN L. JOHNSON (Attachments: # <u>1</u> Text of Proposed Order # <u>2</u> Exhibit Consent Decree for Entry)(McDonough, Eileen) (Entered: 11/13/2007)
11/19/2007	<u>40</u>	ORDER granting <u>39</u> Motion for Judgment/Entry of Consent Decree. Signed by Judge Louis F. Oberdorfer on 11/19/07. (Attachments: # Consent Decree) (cp, ) (Entered: 11/19/2007)
11/19/2007	<u>41</u>	CONSENT DECREE. Signed by Judge Louis F. Oberdorfer on 11/19/07. (cp, ) (Entered: 11/21/2007)
01/11/2008	<u>42</u>	Joint MOTION for Extension of Time to File <i>Motion for fees</i> by CENTER FOR BIOLOGICAL DIVERSITY, VALLEY WATCH, INC., PRESTON FORSYTHE, TINA JOHNSON, JEREMY NICHOLS (Attachments: # <u>1</u> Text of Proposed Order)(Ukeiley, Robert) (Entered: 01/11/2008)
01/14/2008	<u>43</u>	ORDER granting <u>42</u> Motion for Extension of Time to File Motion for Costs of Litigation. Signed by Judge Louis F. Oberdorfer on 1/14/08. (cp, ) (Entered: 01/14/2008)
01/14/2008		Set/Reset Deadlines: Plaintiffs' Motion for Costs of Litigation, or other filing resolving the issue of costs of litigation, including attorneys' fees, due by February 8, 2008. (cp, ) (Entered: 01/14/2008)
02/05/2008	<u>44</u>	Joint MOTION for Extension of Time to File <i>Motion for Attorneys' Fees</i> by CENTER FOR BIOLOGICAL DIVERSITY, VALLEY WATCH, INC., PRESTON FORSYTHE, TINA JOHNSON, JEREMY NICHOLS (Attachments: # <u>1</u> Text of Proposed Order)(Ukeiley, Robert) (Entered: 02/05/2008)
02/08/2008	<u>45</u>	ORDER granting <u>44</u> Plaintiff's Motion for Extension of Time to File Motion for Attorneys' Fees. Signed by Judge Louis F. Oberdorfer on 2/8/08. (cp, ) (Entered: 02/08/2008)
02/26/2008		MINUTE ORDER denying as moot <u>32</u> Motion to Expedite; denying as moot <u>20</u> Motion for Summary Judgment; denying as moot <u>23</u> Motion for Summary Judgment; denying as moot <u>30</u> Motion for Leave to File. Signed by Judge Louis F. Oberdorfer on February 26, 2008. (AG) (Entered: 02/26/2008)
05/28/2008	<u>46</u>	Joint MOTION for Leave to File <i>Exhibit A to Consent Decree</i> by STEPHEN L. JOHNSON (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Text of Proposed Order)(McDonough, Eileen) (Entered: 05/28/2008)
06/02/2008	<u>47</u>	ORDER granting <u>46</u> Joint Motion to File Attachment to Consent Decree. Signed by Judge Louis F. Oberdorfer on June 2, 2008. (lclfo1, ) (Entered: 06/02/2008)
12/04/2008	<u>48</u>	STIPULATION re <u>41</u> Order by STEPHEN L. JOHNSON. (Attachments: # <u>1</u> Exhibit)(McDonough, Eileen) (Entered: 12/04/2008)

**SETTLEMENT AGREEMENT**

WHEREAS, the Complaint in *Sierra Club v. Johnson*, Case No. 06-CV-4000 (N.D. Ill.) filed by Plaintiffs Sierra Club and the American Bottom Conservancy (collectively "Plaintiffs"), alleges that the Defendant Stephen L. Johnson, in his individual capacity as Administrator of the U.S. Environmental Protection Agency (hereafter "EPA"), had a nondiscretionary duty under Clean Air Act section 505(c), 42 U.S.C. § 7661d(c), to issue by May 2, 2006, an operating permit for the Veolia hazardous waste incinerator located in Sauget, Illinois (hereafter the "Facility"), and that he has not done so;

WHEREAS, Plaintiffs contend they are entitled to a declaration that EPA failed to perform that nondiscretionary duty, and an order requiring EPA to issue or deny an operating permit for the Facility, under Clean Air Act section 505(c), 42 U.S.C. § 7661d(c);

WHEREAS, Plaintiffs further contend they are entitled, pursuant to Clean Air Act section 304(d), 42 U.S.C. § 7604(d), to an award of costs of litigation (including reasonable attorneys' fees) with respect to the claims asserted in the Complaint;

WHEREAS, EPA denies all of the preceding allegations and contentions, and in turn contends that EPA has discretion to issue or deny an operating permit for the Facility pursuant to 42 U.S.C. § 7661d(c) and 40 C.F.R. Part 71 within 18 months after May 2, 2007;

WHEREAS, Plaintiffs and EPA (collectively the "Parties") wish to effect a settlement of *Sierra Club v. Johnson*, Case No. 06-CV-4000 (N.D. Ill.), without expensive and protracted litigation;

WHEREAS, the Parties have agreed to a settlement without admission of any issue of fact or law;

WHEREAS, by entering into this Settlement Agreement, the Parties do not waive or limit any claim or defense, on any grounds, related to any final EPA action issuing or denying an operating permit for the Facility; and

WHEREAS, the Parties consider this Settlement Agreement to be an adequate and equitable resolution of the claims in the above-referenced case.

NOW THEREFORE, the Parties agree as follows:

1. EPA in its sole discretion shall, not later than July 18, 2008, either:
  - (a) issue a decision denying an operating permit for the Facility under 42 U.S.C. § 7661d(c) and 40 C.F.R. Part 71; or
  - (b) complete the public participation process for a draft operating permit under 42 U.S.C. § 7661d(c) and 40 C.F.R. Part 71.
2. If EPA does not issue a decision denying an operating permit for the Facility by July 18, 2008, then EPA also shall, not later than September 12, 2008, either:
  - (a) issue a final operating permit for the Facility under 42 U.S.C. § 7661d(c) and 40 C.F.R. Part 71; or
  - (b) issue a final decision denying the draft operating permit under 42 U.S.C. § 7661d(c) and 40 C.F.R. Part 71.
3. The Parties agree and acknowledge that before this Settlement Agreement becomes final and binding upon EPA, EPA will provide public notice of the proposed settlement in the *Federal Register* and an opportunity for public comment pursuant to Clean Air Act section 113(g), 42 U.S.C. § 7413(g). After this Settlement Agreement has undergone notice and comment, the Administrator and/or the Attorney General, as appropriate, will promptly consider

any such written comments in determining whether to withdraw or withhold their consent to the Settlement Agreement, in accordance with section 113(g) of the Clean Air Act. After the Administrator and/or the Attorney General elect whether or not to withdraw or withhold their consent to this Settlement Agreement, EPA will provide written notice of that election to Plaintiffs as expeditiously as possible.

4. If the Administrator and/or the Attorney General elect not to withdraw or withhold their consent under Paragraph 3 of the Settlement Agreement, the Parties shall file the Stipulation of Dismissal Without Prejudice attached hereto as Exhibit A within 10 business days after EPA has provided written notice of that election.

5. Nothing in this Settlement Agreement shall be construed to limit or modify the discretion accorded EPA by the Clean Air Act and by general principles of administrative law, including the discretion to alter, amend or revise any decision or document contemplated by this Settlement Agreement. EPA's obligation to perform the actions specified in Paragraphs 1 and 2 above, and the dates specified in Paragraphs 1 and 2, do not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph. Moreover, nothing in this Settlement Agreement shall be construed as an admission of any issue of fact or law, or to waive or limit any claim or defense, on any grounds, related to any final action EPA may take pursuant to Paragraphs 1 and 2 above.

6. Nothing in this Settlement Agreement shall be construed to confer upon the district court jurisdiction to review any decision or document, either procedural or substantive, to be made, undertaken, or issued by EPA pursuant to this Settlement Agreement. Nothing in this Settlement Agreement shall be construed to confer upon the district court jurisdiction to review

any issues that are within the exclusive jurisdiction of the United States Courts of Appeals, or waive any remedies or defenses the Parties may have, pursuant to sections 307(b)(1) and 505 of the Clean Air Act, 42 U.S.C. §§ 7607(b)(1), 7661d.

7. If the Administrator and/or the Attorney General elect not to withdraw or withhold their consent under Paragraph 3 of the Settlement Agreement, within a reasonable time the United States shall pay \$7,250.00 to Plaintiffs by electronic funds transfer to the bank account designated by Plaintiffs within 10 days after receipt of EPA's written notice of election pursuant to Paragraph 3 hereof, using the Bank Account Designation Form attached as Exhibit B.

8. The Parties recognize and acknowledge that the obligations of the United States under this Settlement Agreement can only be performed using appropriated funds legally available for such purpose. Nothing in this Settlement Agreement shall be interpreted or construed as a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law. In the event that sufficient appropriated funding is not available, the Parties shall attempt to adjust the obligations in Paragraphs 1, 2 and 7 accordingly.

9. Plaintiffs agree that performance of the obligations described in Paragraphs 1, 2 and 7 shall constitute a full and complete settlement of all claims that Plaintiffs have asserted or could have asserted under any provision of law in connection with this case, including those for attorneys' fees or other litigation costs. Plaintiffs therefore discharge and covenant not to sue the United States, including EPA, for any such claims upon performance of the obligations described in Paragraphs 1, 2 and 7.

10. Any notices required or provided for by this Settlement Agreement shall be made

in writing, via facsimile or other means, and sent to the following:

For Plaintiffs:

David Bender  
Garvey McNeil & McGillivray, S.C.  
634 W Main Street, Ste 101  
Madison, WI 53703  
Phone: (608) 256-1003  
Fax: (608) 256-0933

For Defendant:

Heather E. Gange  
U.S. Department of Justice  
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601 D St., NW, Ste 8000  
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David Orlin  
Office of General Counsel  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N. W.  
Mail Code: 2344A  
Washington, DC 20460  
Phone: (202) 564-1222  
Fax: (202) 564-5603

11. In the event EPA fails to fulfill the obligations described in Paragraphs 1, 2 or 7 of this Settlement Agreement, or in the event of a dispute between the Parties concerning the interpretation or implementation of any aspect of this Settlement Agreement, the disputing party shall provide the other party with a written notice outlining the nature of the dispute or failure to perform and requesting informal negotiations. If the Parties cannot reach an agreed-upon

resolution within five (5) business days after receipt of the notice, the disputing party's sole and exclusive remedy shall be the right to move the Court to reinstate Case No. 06-CV-4000 (N.D. Ill.). No such motion shall be properly filed unless the disputing party has followed the procedure set forth in this Paragraph and provided the other parties with written notice received at least five business days before the motion is filed.

12. When EPA's obligations under Paragraphs 1, 2 and 7 have been completed, this Settlement Agreement shall be terminated, and the parties shall file an appropriate stipulation with the Court pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) as soon as practicable so that the dismissal is changed to a dismissal with prejudice.

13. The undersigned representatives of each Party certify that they are fully authorized by the Party that they represent to bind that Party to the terms of this Settlement Agreement.

**COUNSEL FOR PLAINTIFFS SIERRA CLUB and  
THE AMERICAN BOTTOM CONSERVANCY:**

Dated: April 14, 2008




DAVID BENDER  
Garvey McNeil & McGillivray  
634 W. Main Street, Ste. 101  
Madison, WI 53703  
Tel. 608.256.1003  
Fax. 608.256.0933



**COUNSEL FOR DEFENDANT:**

RONALD J. TENPAS  
Assistant Attorney General  
Environment & Natural Resources Division

Dated: June 4, 2008

  
HEATHER E. GANGE  
U.S. Department of Justice  
Environmental Defense Section  
P.O. Box 23986  
Washington, DC 20026-3986  
Tel. 202.514.4206  
Fax. 202.514.8865

OF COUNSEL:  
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U.S. Environmental Protection Agency  
Office of General Counsel  
1200 Pennsylvania Ave., N.W.  
Mail Code 2344A  
Washington, D.C. 20460

BROWN, TERMED

**United States District Court  
Northern District of Illinois – CM/ECF LIVE, Ver 3.2.2 (Chicago)  
CIVIL DOCKET FOR CASE #: 1:06-cv-04000**

Sierra Club et al v. Johnson et al  
Assigned to: Honorable Wayne R. Andersen  
Cause: 42:7604 Clear Air Act (Emission Standards)

Date Filed: 07/24/2006  
Date Terminated: 08/04/2008  
Jury Demand: None  
Nature of Suit: 893 Environmental Matters  
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
07/24/2006	<u>1</u>	COMPLAINT filed by Sierra Club and American Bottom Conservancy (Exhibits). (rp, ) (Entered: 07/27/2006)
07/24/2006	<u>2</u>	CIVIL Cover Sheet. (rp, ) (Entered: 07/27/2006)
07/24/2006	<u>4</u>	SUMMONS Issued as to United States Environmental Protection Agency, U.S. Attorney, and U.S. Attorney General. (rp, ) (Entered: 07/27/2006)
07/27/2006		MAILED Letter regarding Local Rule 83.16 to Plaintiff's counsel. (rp, ) (Entered: 07/27/2006)
07/28/2006	<u>5</u>	ATTORNEY Appearance for Plaintiffs Sierra Club, American Bottom Conservancy by David Craig Bender (Bender, David) (Entered: 07/28/2006)
07/28/2006	<u>6</u>	AFFIDAVIT of Service filed by Plaintiff Sierra Club regarding Summons and Complaint served on Stephen Johnson, Hon. Alberto Gonzales, United States Environmental Protection Agency, and US Atty Patrick Fitzgerald on July 28, 2006 (Bender, David) (Entered: 07/28/2006)
08/01/2006	<u>7</u>	AFFIDAVIT of Service regarding summons and complaint served on Stephen L. Johnson on 7/28/06 (vmj, ) (Entered: 08/03/2006)
08/18/2006	<u>8</u>	Pursuant to Local Rule 72.1, this case is hereby referred to the calendar of Magistrate Judge Geraldine Soat Brown for the purpose of holding proceedings related to discovery supervision.(tsa, )Mailed notice. (Entered: 08/18/2006)
08/28/2006	<u>9</u>	ATTORNEY Appearance for Defendant Stephen L Johnson by Heather Elizabeth Gange (Attachments: # <u>1</u> Notice of Filing Certificate of Filing)(Gange, Heather) (Entered: 08/28/2006)
09/15/2006	<u>10</u>	ATTORNEY Appearance for Plaintiff Sierra Club by Bruce Edward Nilles. (rp, ) (Entered: 09/18/2006)
09/28/2006	<u>11</u>	MINUTE entry before Judge Wayne R. Andersen : The time for defendant to file an answer or otherwise plead to plaintiff's complaint is extended from 9/29/2006 to 10/16/2006. Mailed notice (tsa, ) (Entered: 09/28/2006)
10/13/2006	<u>12</u>	MINUTE entry before Judge Geraldine Soat Brown : The referral of this matter having been assigned to Magistrate Judge Geraldine Soat Brown, an initial status hearing is hereby set before Magistrate Judge Brown on 11/14/06 at 9:00 a.m. in Courtroom 1812. The parties shall deliver a copy of an initial status report providing the information required by Judge Brown's Order Setting Initial Status Report to the Courtroom Deputy (Room 1808) three business days before the initial status hearing. See www.ilnd.uscourts.gov/JUDGE BROWN. Notice mailed by judge's staff (ntf, ) (Entered: 10/13/2006)

10/16/2006	<u>13</u>	MOTION by Defendant Stephen L Johnson to dismiss (Gange, Heather) (Entered: 10/16/2006)
10/16/2006	<u>14</u>	MOTION by Defendant Stephen L Johnson to dismiss for lack of jurisdiction ( <i>Memorandum in Support</i> ) (Attachments: # <u>1</u> Exhibit A – Notice Initiating Title V Permitting# <u>2</u> Exhibit B – Kochert v. Greater LaFayette# <u>3</u> Exhibit C – Edwards v. US DOE# <u>4</u> Exhibit D – Schwarz v. Kempf)(Gange, Heather) (Entered: 10/16/2006)
10/16/2006	<u>15</u>	NOTICE of Motion by Heather Elizabeth Gange for presentment of motion to dismiss <u>13</u> before Honorable Wayne R. Andersen on 10/26/2006 at 11:00 AM. (Gange, Heather) (Entered: 10/16/2006)
10/19/2006	<u>16</u>	<i>Amended</i> NOTICE of Motion by Heather Elizabeth Gange for presentment of motion to dismiss <u>13</u> before Honorable Wayne R. Andersen on 10/26/2006 at 09:00 AM. (Gange, Heather) (Entered: 10/19/2006)
10/25/2006	<u>17</u>	STIPULATED Order regarding motion to dismiss <u>13</u> for Briefing Schedule and Stay by parties. (Attachments: # <u>1</u> Certificate of Service)(Gange, Heather) Text Modified on 10/26/2006 (lcw, ). (Entered: 10/25/2006)
10/26/2006	<u>18</u>	MINUTE entry before Judge Wayne R. Andersen : Defendant's motions to dismiss/lack of jurisdiction, <u>14</u> , <u>13</u> are entered and briefed as follows : Responses due by 11/17/2006. Replies due by 12/8/2006. Ruling will be made by mail. Mailed notice (tsa, ) (Entered: 10/30/2006)
10/30/2006	<u>19</u>	MINUTE entry before Judge Wayne R. Andersen : Enter stipulated order. Mailed notice (gej, ) (Entered: 11/01/2006)
10/30/2006	<u>20</u>	STIPULATED ORDER Signed by Judge Wayne R. Andersen on 10/30/2006.(gej, ) (Entered: 11/01/2006)
11/02/2006	<u>21</u>	MINUTE entry before Judge Geraldine Soat Brown : In light of the stipulated order entered on 10/30/06 by District Judge Andersen, the status hearing date of 11/14/06 is stricken. Notice mailed by judge's staff (ntf, ) (Entered: 11/02/2006)
11/16/2006	<u>22</u>	MEMORANDUM by Sierra Club in Opposition to <i>Defendant's Motion to Dismiss</i> (Bender, David) (Entered: 11/16/2006)
12/01/2006	<u>23</u>	MOTION by Plaintiffs Sierra Club, American Bottom Conservancy, Defendant Stephen L Johnson for extension of time ( <i>Joint Motion to Enter Second Stipulated Order</i> ) (Attachments: # <u>1</u> Exhibit Second Stipulated Order)(Gange, Heather) (Entered: 12/01/2006)
12/01/2006	<u>24</u>	<i>Notice of Joint Motion</i> : NOTICE of Motion by Heather Elizabeth Gange for presentment of motion for extension of time <u>23</u> before Honorable Wayne R. Andersen on 12/7/2006 at 09:00 AM. (Gange, Heather) (Entered: 12/01/2006)
12/06/2006	<u>25</u>	MINUTE entry before Judge Wayne R. Andersen :Joint motion for entry of second stipulated order <u>23</u> is granted. Enter second stipulated order. The defendant shall file a reply brief in support of its own motion to dismiss by 12/15/2006. Mailed notice (gej, ) (Entered: 12/11/2006)
12/06/2006	<u>26</u>	SECOND STIPULATED Order Signed by Judge Wayne R. Andersen on 12/6/2006.(gej, ) (Entered: 12/11/2006)
12/14/2006	<u>27</u>	REPLY by Stephen L Johnsonin Support of MOTION by Defendant Stephen L Johnson to dismiss <u>13</u> (Gange, Heather) (Entered: 12/14/2006)

05/21/2007	<u>28</u>	MINUTE entry before Judge Wayne R. Andersen : Enter Memorandum Opinion and Order: For the foregoing reasons, the Administrator's motion to dismiss the plaintiffs' complaint <u>13</u> is denied. The parties are hereby ordered to appear in front of this court on 06/21/07 at 9:00 AM to discuss the resolution of this case. The Administrator is ordered to report to the court the date by which he will issue or deny the Title V permit. (For further detail see separate order). Mailed notice (ar, ) (Entered: 05/22/2007)
05/21/2007	<u>29</u>	MEMORANDUM Opinion and Order, signed by Judge Wayne R. Andersen on 5/21/2007 <u>28</u> . Mailed notice (ar, ) (Entered: 05/22/2007)
05/25/2007	<u>30</u>	MOTION by Defendant Stephen L Johnson for extension of time to file answer ( <i>Joint Motion</i> ) (Gange, Heather) (Entered: 05/25/2007)
05/25/2007	<u>31</u>	<i>Joint</i> NOTICE of Motion by Heather Elizabeth Gange for presentment of motion for extension of time to file answer <u>30</u> before Honorable Wayne R. Andersen on 5/31/2007 at 09:00 AM. (Gange, Heather) (Entered: 05/25/2007)
05/31/2007	<u>32</u>	MINUTE entry before Judge Wayne R. Andersen :Defendant's motion for extension of time to answer <u>30</u> or otherwise plead is granted to 6/15/2007.Mailed notice (tsa, ) (Entered: 06/04/2007)
06/05/2007	<u>33</u>	MINUTE entry before Judge Wayne R. Andersen :Defendant's motion to dismiss for lack of jurisdiction <u>14</u> is denied by document number <u>28</u> .Mailed notice (tsa, ) (Entered: 06/05/2007)
06/11/2007	<u>34</u>	ATTORNEY Appearance for Movant Veolia ES Technical Solutions, LLC. by Edward Abraham Cohen (Attachments: # <u>1</u> Certificate of Service by Electronic Filing)(Cohen, Edward) (Entered: 06/11/2007)
06/11/2007	<u>35</u>	MOTION by Movant Veolia ES Technical Solutions, LLC. to intervene (Attachments: # <u>1</u> Certificate of Service of Electronic Filing)(Cohen, Edward) (Entered: 06/11/2007)
06/11/2007	<u>36</u>	MOTION by Movant Veolia ES Technical Solutions, LLC. to intervene <i>Memorandum in Support</i> (Attachments: # <u>1</u> Certificate of Service of Electronic Filing)(Cohen, Edward) (Entered: 06/11/2007)
06/11/2007	<u>37</u>	ANSWER to Complaint for <i>Declaratory and Injunctive Relief</i> by Veolia ES Technical Solutions, LLC. (Attachments: # <u>1</u> Certificate of Service of Electronic Filing)(Cohen, Edward) (Entered: 06/11/2007)
06/11/2007	<u>38</u>	NOTIFICATION of Affiliates pursuant to Local Rule 3.2 by Veolia ES Technical Solutions, LLC. (Attachments: # <u>1</u> Certificate of Service of Electronic Filing)(Cohen, Edward) (Entered: 06/11/2007)
06/11/2007	<u>39</u>	NOTICE of Motion by Edward Abraham Cohen for presentment of motion to intervene <u>35</u> , motion to intervene <u>36</u> before Honorable Wayne R. Andersen on 6/21/2007 at 09:00 AM. (Attachments: # <u>1</u> Certificate of Service of Electronic Filing)(Cohen, Edward) (Entered: 06/11/2007)
06/11/2007	<u>40</u>	ATTORNEY Appearance for Movant Veolia ES Technical Solutions, LLC. by David Matthew Rownd (Rownd, David) (Entered: 06/11/2007)
06/11/2007	<u>41</u>	ATTORNEY Appearance for Movant Veolia ES Technical Solutions, LLC. by W. David Wells (Attachments: # <u>1</u> Certificate of Service of Electronic Filing)(Wells, W.) (Entered: 06/11/2007)

06/11/2007	<u>42</u>	ATTORNEY Appearance for Movant Veolia ES Technical Solutions, LLC. by Joseph Kellmeyer (Attachments: # <u>1</u> Certificate of Service of Electronic Filing)(Kellmeyer, Joseph) (Entered: 06/11/2007)
06/15/2007	<u>43</u>	ANSWER to Complaint by Stephen L Johnson(Gange, Heather) (Entered: 06/15/2007)
06/18/2007	<u>44</u>	Notice Regarding Federal Title V Permit Proceedings by Stephen L Johnson (Gange, Heather) (Entered: 06/18/2007)
06/21/2007	<u>45</u>	MINUTE entry before Judge Wayne R. Andersen :Movant Veiolia's Motions to intervene <u>35</u> , <u>36</u> are held and continued. Motion hearing held on 6/21/2007 regarding motions to intervene <u>36</u> , <u>35</u> . Motion Hearing set for 7/24/2007 at 09:00 AM.Advised in open court notice (tsa, ) (Entered: 06/22/2007)
07/24/2007	<u>46</u>	MINUTE entry before Judge Wayne R. Andersen :Motion to intervene <u>35</u> is entered and continued; Motion Hearing set for 9/4/2007 at 01:30 PM.Mailed notice (tsa, ) (Entered: 07/24/2007)
08/31/2007	<u>47</u>	MINUTE entry before Judge Wayne R. Andersen :Status hearing reset for 9/27/2007 at 09:00 AM.Mailed notice (tsa, ) (Entered: 08/31/2007)
09/27/2007	<u>48</u>	MINUTE entry before Judge Wayne R. Andersen :Status hearing held on 9/27/2007 and continued to 12/6/2007 at 09:00 AM.Telephoned notice (tsa, ) (Entered: 09/27/2007)
12/05/2007	<u>49</u>	MINUTE entry before Judge Wayne R. Andersen :Telephone status hearing held on 12/5/2007 and continued to 4/3/2008 @ 9:00 a.m. Status hearing stricken for 12/6/2007.Mailed/Telephoned notice (tsa, ) (Entered: 12/05/2007)
03/11/2008	<u>50</u>	MINUTE entry before Judge Wayne R. Andersen :Movant Veolia's motion to intervene <u>35</u> is withdrawn without prejudice. Counsel for Veolia will continue to receive notifications of any docket entries in this case. Mailed notice (tsa, ) (Entered: 03/11/2008)
07/25/2008	<u>51</u>	STIPULATION of Dismissal <i>without Prejudice</i> (Bender, David) (Entered: 07/25/2008)
07/28/2008	<u>52</u>	MINUTE entry before the Honorable Geraldine Soat Brown: A stipulation to dismiss has been filed with the District Judge. All matters relating to the referral of this action having been concluded, the referral is closed and the case is returned to the assigned judge. Judge Honorable Geraldine Soat Brown no longer referred to the case.Notice mailed by judge's staff (ntf, ) (Entered: 07/28/2008)
08/04/2008	<u>53</u>	MINUTE entry before the Honorable Wayne R. Andersen:Pursuant to stipulation, this case is hereby dismissed without prejudice. Civil case terminated. Mailed notice (tsa, ) (Entered: 08/04/2008)
10/08/2008	<u>54</u>	STIPULATION of Dismissal <i>with prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii)</i> (Bender, David) (Entered: 10/08/2008)

**Settlement Agreement Regarding Attorney Fees and Costs in  
*Bill MacClarence, P.E. v. Stephen L. Johnson*  
D. D.C Civ. No. 07-55  
D.C. Cir. No. 08-5160**

This agreement is entered into between Plaintiff-Appellee Bill MacClarence, P.E., and Federal Defendant-Appellant Stephen L. Johnson, in his official capacity as Administrator, United States Environmental Protection Agency ("EPA").

WHEREAS, on May 21, 2007, Plaintiff-Appellee and Federal Defendant-Appellant stipulated to the partial dismissal of complaint in *Bill MacClarence, P.E. v. Stephen L. Johnson*, D. D.C Civ. No. 07-55 (RWR/JMF), leaving only the issue of attorneys' fees.

WHEREAS, Plaintiff-Appellee sought an award of attorneys' fees in the amount \$18,326 and \$385.50 in costs. The Federal Defendant-Appellant argued that award should be limited to \$9,980.60 in attorneys' fees and \$385.50 in costs.

WHEREAS, on March 17, 2008, the United States District Court for the District of Columbia issued an Order and Judgment awarding Plaintiff-Appellee \$18,326 in attorneys' fees and \$385.50 in costs.

WHEREAS, on May 16, 2008, Federal Defendant-Appellant filed notice of his intent to appeal the United States District Court for the District of Columbia's Order and Judgment dated March 17, 2008.

WHEREAS, the parties wish to resolve without further litigation the issues raised by Plaintiff-Appellee's claims for attorneys' fees and costs.

Accordingly, for that and only that purpose, the parties hereby stipulate and agree to dispose of all matters relating to Plaintiff-Appellee's request for attorneys' fees and costs incurred in the above-entitled case as follows:

1. The Federal Defendant-Appellant shall pay as soon as reasonably practicable Plaintiff-Appellee \$14,346.10 in full settlement of any and all claims that have been or could be sought for attorneys' fees and costs related to the above-entitled litigation, including the district court and appellate proceedings, and attorneys' fees and costs negotiations. The check(s) shall be made payable to Bill MacClarence's counsel, Robert Ukeiley, P.S.C., and mailed to Law Office of Robert Ukeiley, 435R Chestnut Street, Berea, KY 40403.

2. In exchange for payment pursuant to Paragraph 1 within 90 days of the date on which the Agreement has been executed by both parties (or after 90 days if Plaintiff accepts payment after that date), Plaintiff-Appellee and his counsel, assigns, executors and administrators forever release, abandon, waive, and discharge the United States and the Federal Defendant-Appellant from any and all claims, demands, damages, causes of action or suits at law or equity to recover fees, costs, or expenses in any way related to the above-entitled litigation.



3. This agreement represents a compromise of disputes and does not constitute, and shall not be construed as, an admission of liability by the Federal Defendant-Appellant with respect to any matter associated with Plaintiff-Appellee's claims for attorneys' fees and costs. The Federal Defendant-Appellant enters into this agreement solely to avoid further litigation. The parties shall not use this agreement as precedent in any claim for attorneys' fees or costs that may arise in the future.

5. The parties recognize and acknowledge that the payment obligations of the Federal Defendant-Appellant can only be paid from appropriated funds legally available for such purpose. No provision of this agreement shall be interpreted as or constitute a commitment or requirement that the Federal Defendant-Appellant obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other applicable provision of law.

6. Within 30 days after the Plaintiff-Appellee accepts payment pursuant to paragraphs 1 and 2 of this agreement, Federal Defendant-Appellee will dismiss the appeal in D.C. Circuit No. 08-5160.

7. This document sets forth the entire agreement of the parties for the settlement of the request for attorneys' fees and costs. No modification of this agreement shall be valid unless expressly consented to in writing by all the parties.



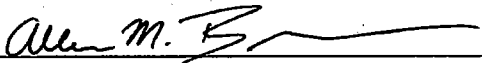
8. The undersigned warrant that they have full authority to enter into this agreement and by their signatures bind to the terms of this agreement the party or parties on whose behalf they have signed.

\_\_\_\_\_  
BILL MACCLARENCE, P.E.  
10840 Glazanof Drive  
Anchorage, AK 99507  
*Plaintiff-Appellee*

Date: \_\_\_\_\_

\_\_\_\_\_  
ROBERT UKEILEY  
Law Office of Robert Ukeiley  
435R Chestnut Street, Suite 1  
Berea, KY 40403  
*Counsel for Plaintiff-Appellee*

Date: \_\_\_\_\_

  
\_\_\_\_\_  
ALLEN M. BRABENDER  
United States Department of Justice  
Environment & Natural Resources Division  
P.O. Box 23795 – L'Enfant Plaza Station  
Washington, DC 20026-3795  
*Counsel for Federal Defendant-Appellant*

Date: 6/5/08

CASREF, CLOSED, TYPE-C

**U.S. District Court  
District of Columbia (Washington, DC)  
CIVIL DOCKET FOR CASE #: 1:07-cv-00055-JMF**

MACCLARENCE v. JOHNSON  
Assigned to: Magistrate Judge John M. Facciola  
Case in other court: USCA, 08-05160  
Cause: 33:1365 Environmental Matters

Date Filed: 01/10/2007  
Date Terminated: 03/17/2008  
Jury Demand: None  
Nature of Suit: 893 Environmental Matters  
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
01/10/2007	<u>1</u>	COMPLAINT against STEPHEN L. JOHNSON ( Filing fee \$ 350 receipt number 4616001453.)filed by BILL MACCLARENCE. (Attachments: # <u>1</u> Civil Cover Sheet)(jf, ) (Entered: 01/12/2007)
01/10/2007		SUMMONS (3) Issued as to STEPHEN L. JOHNSON, U.S. Attorney and U.S. Attorney General (jf, ) (Entered: 01/12/2007)
01/30/2007	<u>2</u>	MOTION for Leave to Appear Pro Hac Vice :Attorney Name- William Eddie. :Address- 610 SW Alder St., Ste 910, Portland, OR 97205. Phone No. - 503-542-5245. Fax No. - 503-225-0276 by BILL MACCLARENCE. (Attachments: # <u>1</u> Affidavit # <u>2</u> Text of Proposed Order)(Ukeiley, Robert) (Entered: 01/30/2007)
01/31/2007	<u>3</u>	ENTERED IN ERROR.....RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to STEPHEN L. JOHNSON served on 1/22/2007, answer due 3/23/2007. (Ukeiley, Robert) Modified on 2/1/2007 (jf, ). (Entered: 01/31/2007)
01/31/2007	<u>4</u>	ENTERED IN ERROR.....RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the US Attorney. (Ukeiley, Robert) Modified on 2/1/2007 (jf, ). (Entered: 01/31/2007)
01/31/2007	<u>5</u>	ENTERED IN ERROR.....RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on Attorney General. Date of Service Upon Attorney General 01/22/2007. (Ukeiley, Robert) Modified on 2/1/2007 (jf, ). (Entered: 01/31/2007)
02/01/2007		NOTICE OF CORRECTED DOCKET ENTRY: re <u>4</u> Summons Returned Executed as to US Attorney for DC, <u>3</u> Summons Returned Executed as to Federal Defendant, <u>5</u> Summons Returned Executed as to Attorney General was entered in error and counsel was instructed to refile said pleading, with green card as the proof of service. (jf, ) (Entered: 02/01/2007)
02/13/2007	<u>6</u>	NOTICE of Change of Address by Robert Steven Ukeiley (Ukeiley, Robert) (Entered: 02/13/2007)
02/21/2007	<u>7</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to STEPHEN L. JOHNSON served on 1/22/2007, answer due 3/23/2007. (Ukeiley, Robert) (Entered: 02/21/2007)
02/21/2007	<u>8</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the US Attorney. (Ukeiley, Robert) (Entered: 02/21/2007)
02/21/2007	<u>9</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on Attorney General. Date of Service Upon Attorney General 01/22/2007. (Ukeiley, Robert) (Entered: 02/21/2007)
03/23/2007	<u>10</u>	Unopposed MOTION for Extension of Time to File Answer re <u>1</u> Complaint by STEPHEN L. JOHNSON (Gunter, John) (Entered: 03/23/2007)
04/03/2007		MINUTE ORDER: It is hereby ORDERED that the Defendant's Motion <u>10</u> for Extension of Time to Answer be, and hereby is, GRANTED. Signed by Judge Richard W. Roberts on 4/3/07. (lcrwr3) (Entered: 04/03/2007)
04/10/2007		MINUTE ORDER: It is hereby ORDERED that the Motion <u>2</u> for Leave to Appear Pro Hac Vice be, and hereby is, GRANTED. Signed by Judge Richard W. Roberts on

		4/10/07. (lcrwr3) (Entered: 04/10/2007)
04/23/2007	<u>11</u>	Unopposed MOTION for Extension of Time to File Answer re <u>1</u> Complaint by STEPHEN L. JOHNSON (Gunter, John) (Entered: 04/23/2007)
05/09/2007		MINUTE ORDER: It is hereby ORDERED that Defendant's Unopposed Motion <u>11</u> for Extension of Time to Answer be, and hereby is, GRANTED. Answer due by 5/23/07. Signed by Judge Richard W. Roberts on 5/8/07. (lcrwr3) (Entered: 05/09/2007)
05/09/2007		Set/Reset Deadlines: Answer due by 5/23/2007. (lin, ) (Entered: 05/09/2007)
05/21/2007	<u>12</u>	STIPULATION of <i>Partial Dismissal</i> by STEPHEN L. JOHNSON. (Gunter, John) (Entered: 05/21/2007)
06/21/2007	<u>13</u>	MOTION for Attorney Fees by BILL MACCLARENCE (Attachments: # <u>1</u> Affidavit of William Eddie# <u>2</u> Exhibit 1 to Eddie Declaration# <u>3</u> Exhibit 2 to Eddie Declaration# <u>4</u> Exhibit 3 to Eddie Declaration# <u>5</u> Affidavit of Robert Ukeiley# <u>6</u> Exhibit A to Ukeiley Declaration# <u>7</u> Exhibit B to Ukeiley Declaration# <u>8</u> Exhibit C to Ukeiley Declaration# <u>9</u> Text of Proposed Order)(Ukeiley, Robert) (Entered: 06/21/2007)
06/22/2007	<u>14</u>	Unopposed MOTION for Extension of Time to File Response/Reply as to <u>13</u> MOTION for Attorney Fees by STEPHEN L. JOHNSON (Gunter, John) (Entered: 06/22/2007)
07/19/2007		MINUTE ORDER: It is hereby ORDERED that Defendant's Unopposed Motion <u>14</u> for Extension of Time to Oppose Plaintiff's Motion to Award Attorney's Fees be, and hereby is, GRANTED. Opposition due by 8/6/07. Signed by Judge Richard W. Roberts on 7/19/07. (lcrwr3 ) (Entered: 07/19/2007)
08/03/2007	<u>15</u>	Memorandum in opposition to re <u>13</u> MOTION for Attorney Fees filed by STEPHEN L. JOHNSON. (Attachments: # <u>1</u> Exhibit 1 — Complaint in MacClarence v. Johnson# <u>2</u> Exhibit 2 — Complaint in Rocky Mountain Clean Air Action v. Johnson)(Gunter, John) (Entered: 08/03/2007)
08/10/2007	<u>16</u>	REPLY to opposition to motion re <u>13</u> MOTION for Attorney Fees filed by BILL MACCLARENCE. (Attachments: # <u>1</u> Affidavit Second Declaration of William Eddie# <u>2</u> Exhibit 1 to Second Declaration of William Eddie# <u>3</u> Affidavit Second Declaration of Robert Ukeiley# <u>4</u> Exhibit Ex. D to Second Declaration of Robert Ukeiley# <u>5</u> Exhibit Ex E to Second Declaration of Robert Ukeiley)(Ukeiley, Robert) (Entered: 08/10/2007)
10/23/2007		CASE REFERRED to Magistrate Judge John M. Facciola for motion for Attorney fees <u>13</u> . (ls, ) (Entered: 10/29/2007)
11/05/2007	<u>17</u>	ORDER re referral to Judge Facciola for attorneys' fees. Signed by Magistrate Judge John M. Facciola on 11/5/07. (SP, ) (Entered: 11/05/2007)
01/29/2008	<u>18</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by STEPHEN L. JOHNSON (Attachments: # <u>1</u> Exhibit 1 — Slip Opinion in Rocky Mountain Clean Air Action v. Johnson)(Gunter, John) (Entered: 01/29/2008)
02/05/2008	<u>19</u>	RESPONSE re <u>18</u> NOTICE OF SUPPLEMENTAL AUTHORITY filed by BILL MACCLARENCE. (Ukeiley, Robert) (Entered: 02/05/2008)
02/06/2008	<u>20</u>	ORDER instructing parties file a joint report by February 20, 2008 indicating whether they consent to referral of plaintiff's motion <u>13</u> for attorneys' fees to the magistrate judge for a final decision rather than for a report and recommendation. Signed by Judge Richard W. Roberts on 2/6/08. (lcrwr2) (Entered: 02/06/2008)
02/06/2008		Set/Reset Deadlines: Joint Report due by 2/20/2008 (mm) (Entered: 02/07/2008)
02/14/2008		Set/Reset Deadlines: Status Report due by 2/20/2008 (lin, ) (Entered: 02/14/2008)
02/19/2008	<u>21</u>	STATUS REPORT <i>regarding stipulating to final decision by magistrate judge</i> by BILL MACCLARENCE. (Ukeiley, Robert) (Entered: 02/19/2008)
02/20/2008		Case reassigned to Magistrate Judge John M. Facciola. Judge Richard W. Roberts no longer assigned to the case. (kb) (Entered: 02/21/2008)

03/17/2008	<u>22</u>	ORDER granting <u>13</u> Motion for Attorney Fees. Signed by Magistrate Judge John M. Facciola on 3/17/08. (SP, ) (Entered: 03/17/2008)
03/17/2008	<u>23</u>	MEMORANDUM AND OPINION re attorneys' fees. Signed by Magistrate Judge John M. Facciola on 3/17/08. (SP, ) (Entered: 03/17/2008)
03/17/2008	<u>24</u>	CLERK'S JUDGMENT in favor of Plaintiff Bill MacClarence, P. E. against Defendant Stephen L. Johnson. It is ordered that the defendant pay Plaintiff \$18,326.00 in attorney fees and 385.50 in costs. Signed by Lynn D. Coln, Clerk on 03/17/08. (ldc, ) (Entered: 03/17/2008)
05/16/2008	<u>25</u>	NOTICE OF APPEAL as to <u>23</u> Memorandum & Opinion, <u>22</u> Order on Motion for Attorney Fees, <u>24</u> Clerk's Judgment, by STEPHEN L. JOHNSON. Fee Status: No Fee Paid. Parties have been notified. (Gunter, John) (Entered: 05/16/2008)
05/19/2008		Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re <u>25</u> Notice of Appeal (tg, ) (Entered: 05/19/2008)
05/30/2008		USCA Case Number 08-5160 for <u>25</u> Notice of Appeal filed by STEPHEN L. JOHNSON. (tg, ) (Entered: 06/03/2008)
09/02/2008	<u>26</u>	ORDER of USCA (certified copy) as to <u>25</u> Notice of Appeal filed by STEPHEN L. JOHNSON, it is ORDERED that the motion be granted and this case is hereby dismissed. (USCA No. 08-5160)(kb) (Entered: 09/02/2008)

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**General Docket**  
**United States Court of Appeals for DC Circuit**


<b>Court of Appeals Docket #:</b> 08-5160	<b>Docketed:</b> 05/29/2008
<b>Nature of Suit:</b> 2893 Environmental Matters	<b>Termed:</b> 09/02/2008
Bill MacClarence v. Stephen Johnson	
<b>Appeal From:</b> United States District Court for the District of Columbia	

**Case Type Information:**

- 1) Civil US
- 2) United States
- 3) -


05/29/2008 US CIVIL CASE docketed. [08-5160]

05/29/2008 NOTICE OF APPEAL filed [1118702] by Stephen L. Johnson of decision of U.S. District Court. [08-5160]


06/18/2008  CLERK'S ORDER filed [1122193] directing party to file initial submissions: APPELLANT docketing statement due 07/18/2008. APPELLANT certificate as to parties, etc. due 07/18/2008. APPELLANT statement of issues due 07/18/2008. APPELLANT underlying decision due 07/18/2008. APPELLANT deferred appendix statement due 07/18/2008. APPELLANT notice of appearance due 07/18/2008. APPELLANT procedural motions due 07/18/2008. APPELLANT dispositive motions due 08/04/2008; directing party to file initial submissions: APPELLEE certificate as to parties, etc. due 07/18/2008. APPELLEE entry of appearance due 07/18/2008. APPELLEE procedural motions due 07/18/2008. APPELLEE dispositive motions due 08/04/2008 [08-5160]

07/11/2008 ENTRY OF APPEARANCE filed [1127691] by Mr. Allen Michael Brabender for Stephen L. Johnson [08-5160]

07/18/2008 UNOPPOSED MOTION filed [1129350] by Stephen L. Johnson and Bill MacClarence to extend deadlines to file initial submissions to 08/18/2008. [Service Date:07/18/2008 ] [08-5160]

07/25/2008  CLERK'S ORDER filed [1129728] granting motion to extend time [1129350-2]; extending initial submissions for appellant/petitioner [1122193-2] APPELLANT docketing statement due 08/18/2008. APPELLANT certificate as to parties, etc. due 08/18/2008. APPELLANT statement of issues due 08/18/2008. APPELLANT underlying decision due 08/18/2008. APPELLANT deferred appendix statement due 08/18/2008. APPELLANT procedural motions due 08/18/2008. APPELLANT dispositive motions due 09/03/2008; extending initial submissions for appellee/respondent [1122193-3] APPELLEE certificate as to parties, ect. due 08/18/2008. APPELLEE entry of appearance due 08/18/2008. APPELLEE procedural motions due 08/18/2008. APPELLEE dispositive motions due 09/03/2008 [08-5160]

08/07/2008 UNOPPOSED MOTION filed [1133001] by Stephen L. Johnson to dismiss case voluntarily [Mail Service Date:08/07/2008 ] [08-5160]

09/02/2008  CLERK'S ORDER filed [1135988] granting motion to dismiss case voluntarily [1133001-2]; issuing mandate [08-5160]

09/02/2008 MANDATE ISSUED to Clerk, District Court [08-5160]

PACER Service Center			
Transaction Receipt			
02/27/2009 17:25:13			
PACER Login:	de2407	Client Code:	
Description:	Docket Report (filtered)	Search Criteria:	08-5160
Billable Pages:	1	Cost:	0.08

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Assistant Attorney General  
2 Environment & Natural Resources Division

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Environment & Natural Resources Division  
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6 San Francisco, CA 94105  
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8 Counsel for Defendants

9  
10 UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION  
13

14  
15 ASSOCIATION OF IRRITATED  
16 RESIDENTS, an unincorporated association,  
and NATURAL RESOURCES DEFENSE  
COUNCIL, INC.,

17 Plaintiffs,

18 v.

19 UNITED STATES ENVIRONMENTAL  
20 PROTECTION AGENCY, STEPHEN L.  
JOHNSON, in his official capacity as  
21 Administrator of the United States  
Environmental Protection Agency, and  
22 WAYNE NASTRI, in his official capacity as  
Regional Administrator for Region IX of the  
23 United States Environmental Protection  
Agency,

24 Defendants.  
25  
26  
27  
28

No. CV 08-00227 SC

**STIPULATION AND  
[PROPOSED] ORDER**

90.524-18229



1 WHEREAS, Plaintiffs Association of Irrigated Residents and the Natural Resources  
2 Defense Council, Inc. filed a complaint, AIR v. EPA, Case No. CV 08-00227 SC, on January 14,  
3 2008, against the United States Environmental Protection Agency; Stephen L. Johnson, in his  
4 official capacity as Administrator of the United States Environmental Protection Agency; and  
5 Wayne Nastri, in his official capacity as Administrator for Region IX of the United States  
6 Environmental Protection Agency (collectively, "EPA"), pursuant to the citizen suit provision in  
7 section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2), alleging that EPA failed to  
8 perform nondiscretionary duties by not acting on certain state implementation plans within the  
9 time lines set forth in section 110(k)(2) of the Clear Air Act, 42 U.S.C. § 7410(k)(2);

10 WHEREAS, Plaintiffs' claims in AIR v. EPA (other than the costs of litigation and  
11 attorneys' fees) were resolved by a consent decree entered by the Court on September 12, 2008  
12 (Dkt. 21) (hereafter "Consent Decree");

13 WHEREAS, Plaintiffs and EPA wish to settle Plaintiffs' claims for costs of litigation,  
14 including attorneys' fees, in AIR v. EPA in order to avoid unnecessary litigation and without any  
15 admission of fact or law;

16 NOW THEREFORE, the parties, by and through their undersigned counsel, hereby  
17 stipulate to the entry of an order that:

18 1. The United States shall pay, within 90 days, \$33,815 to the Center on Race,  
19 Poverty & the Environment and \$10,751 to the Natural Resources Defense Council by electronic  
20 funds transfer in accordance with instructions provided to Defense counsel by Plaintiffs' counsel.

21 2. Any obligation of the United States to expend funds under this settlement  
22 agreement are subject to the availability of appropriations in accordance with the Anti-Deficiency  
23 Act, 31 U.S.C. § 1341. This settlement agreement shall not be construed to require the United  
24 States to obligate or pay funds in contravention of said Anti-Deficiency Act, 31 U.S.C. § 1341.

25 3. Plaintiffs agree that payment pursuant to Paragraph 1 within 90 days of the date  
26 on which the Court enters this Stipulation and Order (or after 90 days if Plaintiffs accept payment  
27 after that date) will constitute full and final payment of costs of litigation (including reasonable  
28 attorneys' fees) incurred by Plaintiffs in connection with AIR v. EPA prior to the Court's entry of



1 the Consent Decree and in negotiating this Stipulation and Order. Upon payment within 90 days  
2 of the date on which the Court enters this Stipulation and Order (or upon payment after 90 days if  
3 Plaintiffs accept payment), Plaintiffs release the United States, including EPA, from any claims  
4 regarding such fees and costs incurred by Plaintiffs in connection with AIR v. EPA prior to the  
5 Court's entry of the Consent Decree and in negotiating this Stipulation and Order. The payment  
6 pursuant to Paragraph 1 does not affect the right of Plaintiffs to seek to recover reasonable costs  
7 and attorneys' fees that Plaintiffs may incur to enforce the Consent Decree, nor does it affect the  
8 right of EPA to oppose any such request for fees and costs, as provided in Paragraph 13 of the  
9 Consent Decree.

10 4. In the event that the United States fails to pay the sum specified in Paragraph 1  
11 within 90 days of the date on which the Court enters this Stipulation and Order, Plaintiffs may  
12 file a motion with the Court for their costs of litigation (including reasonable attorneys' fees).  
13 Such motion shall be filed no later than 150 days after the date the Court enters this Stipulation  
14 and Order. The parties agree that, in litigation over such fee application, the United States  
15 reserves any defenses it may have to a fee application.

17 FOR THE DEFENDANTS:

RONALD J. TENPAS  
Assistant Attorney General  
Environment & Natural Resources Division

19 Dated: December 3, 2008

/s/ Rochelle L. Russell  
ROCHELLE L. RUSSELL  
United States Department of Justice  
Environmental Defense Section  
301 Howard Street, Suite 1050  
San Francisco, CA 94105  
(415) 744-6485  
rochelle.russell@usdoj.gov

24 FOR THE PLAINTIFFS:

25 Dated: December 3, 2008

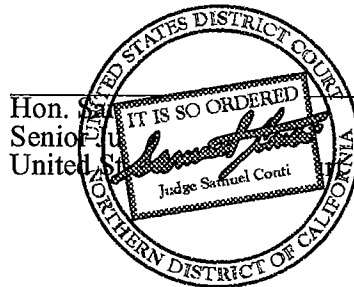
/s/ Brent Newell  
BRENT NEWELL  
Center on Race, Poverty & the Environment  
47 Kearney Street, Suite 804  
San Francisco, CA 94108  
(415) 346-4179  
bnewell@crpe-ej.org  
Attorney for Association of Irrigated Residents

1 Dated: December 3, 2008

/s/ Adriano Martinez  
ADRIANO MARTINEZ  
Natural Resources Defense Council, Inc.  
1314 Second Street  
Santa Monica, CA 90401  
(310) 434-2300  
amartinez@nrdc.org  
Attorney for Natural Resources Defense Council

6 PURSUANT TO STIPULATION, IT IS SO ORDERED.

9 Dated: 12/5/08



**CERTIFICATE OF SERVICE**

I certify that on December 3, 2008, a true and correct copy of the foregoing  
**STIPULATION AND [PROPOSED] ORDER** was served electronically via the Court's e-  
filing system to Counsel of Record.

/s/ Rochelle L. Russell  
ROCHELLE L. RUSSELL

**U.S. District Court  
California Northern District (San Francisco)  
CIVIL DOCKET FOR CASE #: 3:08-cv-00227-SC**

Association of Irrigated Residents et al v. United States  
Environmental Protection Agency et al  
Assigned to: Hon. Samuel Conti  
Cause: 42:6901 Environmental Cleanup Expenses

Date Filed: 01/14/2008  
Jury Demand: None  
Nature of Suit: 893 Environmental Matters  
Jurisdiction: Federal Question

Date Filed	#	Docket Text
01/14/2008	<u>1</u>	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF against United States Environmental Protection Agency, Stephen L. Johnson, Wayne Nastri ( Filing fee \$ 350.00, receipt number 34611014539.). Filed by Association of Irrigated Residents, Natural Resources Defense Council, Inc. (aaa, Court Staff) (Filed on 1/14/2008) (Additional attachment(s) added on 1/16/2008: # <u>1</u> Exhibit 1) (aaa, Court Staff). (Entered: 01/16/2008)
01/14/2008		Summons Issued as to United States Environmental Protection Agency. (aaa, Court Staff) (Filed on 1/14/2008) (Entered: 01/16/2008)
01/14/2008		Summons Issued as to Stephen L. Johnson. (aaa, Court Staff) (Filed on 1/14/2008) (Entered: 01/16/2008)
01/14/2008		Summons Issued as to Wayne Nastri. (aaa, Court Staff) (Filed on 1/14/2008) (Entered: 01/16/2008)
01/14/2008	<u>2</u>	ADR SCHEDULING ORDER: Case Management Statement due by 4/18/2008. Case Management Conference set for 4/25/2008 10:00 AM. Signed by Senior Judge Samuel Conti on 1/14/08. (Attachments: # <u>1</u> SC Standing Order, # <u>2</u> Standing Order)(aaa, Court Staff) (Filed on 1/14/2008) (Entered: 01/16/2008)
01/14/2008		CASE DESIGNATED for Electronic Filing. (aaa, Court Staff) (Filed on 1/14/2008) (Entered: 01/16/2008)
01/23/2008	<u>3</u>	NOTICE of Appearance by Rochelle Leigh Russell (Russell, Rochelle) (Filed on 1/23/2008) (Entered: 01/23/2008)
01/24/2008	<u>4</u>	CERTIFICATE OF SERVICE by Association of Irrigated Residents, Natural Resources Defense Council, Inc. (Newell, Brent) (Filed on 1/24/2008) (Entered: 01/24/2008)
01/24/2008	<u>5</u>	CERTIFICATE OF SERVICE by Association of Irrigated Residents, Natural Resources Defense Council, Inc. (Newell, Brent) (Filed on 1/24/2008) (Entered: 01/24/2008)
01/24/2008	<u>6</u>	SUMMONS Returned Executed by Association of Irrigated Residents, Natural Resources Defense Council, Inc.. United States Environmental Protection Agency served on 1/15/2008, answer due 3/17/2008; Stephen L. Johnson served on 1/15/2008, answer due 3/17/2008; Wayne Nastri served on 1/15/2008, answer due 3/17/2008. (Attachments: # <u>1</u> Exhibit EPA Summons, # <u>2</u> Exhibit Johnson Summons, # <u>3</u> Exhibit Nastri Summons)(Newell, Brent) (Filed on 1/24/2008) Modified on 1/24/2008 (aaa, Court Staff). (Entered: 01/24/2008)
03/14/2008	<u>7</u>	STIPULATION AND [PROPOSED] ORDER <i>to an Extension of Time for Defendants to Respond to Complaint and for Initial Discovery and Case Management Conference</i> by United States Environmental Protection Agency, Stephen L. Johnson, Wayne Nastri. (Russell, Rochelle) (Filed on 3/14/2008) Modified on 3/17/2008 (aaa, Court Staff). (Entered: 03/14/2008)
03/17/2008	<u>8</u>	STIPULATION AND ORDER Initial Case Management Conference set for 6/13/2008 10:00 AM.. Signed by Judge Samuel Conti on 3/17/08. (tdm, COURT STAFF) (Filed on 3/17/2008) (Entered: 03/17/2008)

05/01/2008	<u>9</u>	ANSWER to Complaint by United States Environmental Protection Agency, Stephen L. Johnson, Wayne Nastri. (Russell, Rochelle) (Filed on 5/1/2008) (Entered: 05/01/2008)
05/21/2008	<u>10</u>	ADR Certification (ADR L.R. 3-5b) of discussion of ADR options by <i>Defendants</i> (Russell, Rochelle) (Filed on 5/21/2008) (Entered: 05/21/2008)
05/22/2008	<u>11</u>	NOTICE of Appearance by Sofia Lorena Sarabia <i>Notice of Appearance</i> (Sarabia, Sofia) (Filed on 5/22/2008) (Entered: 05/22/2008)
05/22/2008	<u>12</u>	*** FILED IN ERROR. PLEASE SEE DOCKET # <u>13</u> . *** STIPULATION <i>STIPULATION TO THE ENTRY OF AN ORDER EXTENDING TIME TO CONTINUE INITIAL DISCOVERY AND CASE MANAGEMENT CONFERENCE</i> by Association of Irrigated Residents, Natural Resources Defense Council, Inc.. (Sarabia, Sofia) (Filed on 5/22/2008) Modified on 5/22/2008 (ewn, COURT STAFF). (Entered: 05/22/2008)
05/22/2008	<u>13</u>	<i>STIPULATION TO THE ENTRY OF AN [PROPOSED] ORDER EXTENDING TIME TO CONTINUE INITIAL DISCOVERY AND CASE MANAGEMENT CONFERENCE CORRECTION OF DOCKET # 12</i> by Association of Irrigated Residents, Natural Resources Defense Council, Inc.. (Sarabia, Sofia) (Filed on 5/22/2008) Modified on 5/23/2008 (aaa, Court Staff). (Entered: 05/22/2008)
05/22/2008	<u>14</u>	STIPULATION AND ORDER Initial Case Management Conference set for 6/13/08 is continued to 8/1/2008 10:00 AM.. Signed by Judge Samuel Conti on 5/22/08. (tdm, COURT STAFF) (Filed on 5/22/2008) (Entered: 05/22/2008)
06/30/2008	<u>15</u>	NOTICE by United States Environmental Protection Agency, Stephen L. Johnson, Wayne Nastri of <i>Lodging of Proposed Consent Decree</i> (Attachments: # <u>1</u> Consent Decree)(Russell, Rochelle) (Filed on 6/30/2008) (Entered: 06/30/2008)
07/08/2008	<u>16</u>	STIPULATION to <i>Stay the Case Pending Public Comment on the Proposed Consent Decree</i> by United States Environmental Protection Agency, Stephen L. Johnson, Wayne Nastri. (Russell, Rochelle) (Filed on 7/8/2008) (Entered: 07/08/2008)
07/09/2008	<u>17</u>	STIPULATION AND ORDER STAYING CASE PENDING PUBLIC COMMENT ON THE PROPOSED CONSENT DECREE. Signed by Judge Samuel Conti on 7/9/08. (tdm, COURT STAFF) (Filed on 7/9/2008) (Entered: 07/09/2008)
09/02/2008	<u>18</u>	Joint MOTION to Approve Consent Judgment / <i>Consent Decree</i> filed by United States Environmental Protection Agency, Stephen L. Johnson, Wayne Nastri. (Attachments: # <u>1</u> Exhibit A - Consent Decree)(Russell, Rochelle) (Filed on 9/2/2008) (Entered: 09/02/2008)
09/10/2008	<u>19</u>	CLERK'S NOTICE Joint Motion to Enter Consent Decree Hearing set for 9/15/2008 01:30 PM. (tdm, COURT STAFF) (Filed on 9/10/2008) (Entered: 09/10/2008)
09/10/2008	<u>20</u>	CLERK'S NOTICE Vacating Hearing (tdm, COURT STAFF) (Filed on 9/10/2008) (Entered: 09/10/2008)
09/12/2008	<u>21</u>	CONSENT DECREE. Signed by Judge Samuel Conti on 9/12/08. (sc1c1, COURT STAFF) (Filed on 9/12/2008) (Entered: 09/12/2008)
10/30/2008	<u>22</u>	STIPULATION AND [PROPOSED] ORDER <i>TO THE ENTRY OF AN ORDER EXTENDING TIME TO FILE BILL OF COSTS AND MOTION FOR ATTORNEYS FEES</i> by Association of Irrigated Residents. (Sarabia, Sofia) (Filed on 10/30/2008) Modified on 10/31/2008 (aaa, Court Staff). (Entered: 10/30/2008)
10/31/2008	<u>23</u>	STIPULATION AND ORDER EXTENDING TIME TO FILE BILL OF COSTS AND MOTION FOR ATTORNEYS FEES. Signed by Judge Samuel Conti on 10/31/08. (tdm, COURT STAFF) (Filed on 10/31/2008) (Entered: 10/31/2008)
11/10/2008	<u>24</u>	NOTICE of Change of Address by Rochelle Leigh Russell (Russell, Rochelle) (Filed on 11/10/2008) (Entered: 11/10/2008)
12/03/2008	<u>25</u>	STIPULATION and [PROPOSED] ORDER by United States Environmental Protection Agency, Stephen L. Johnson, Wayne Nastri. (Russell, Rochelle) (Filed on 12/3/2008) (Entered: 12/03/2008)

12/05/2008	<u>26</u>	STIPULATION AND ORDER. Signed by Judge Samuel Conti on 12/5/08. (tdm, COURT STAFF) (Filed on 12/5/2008) (Entered: 12/05/2008)
01/14/2009	<u>27</u>	STIPULATION re <u>21</u> Consent Judgment <i>and Proposed Order to Amend Consent Decree Deadlines</i> by United States Environmental Protection Agency, Stephen L. Johnson, Wayne Nastri. (Russell, Rochelle) (Filed on 1/14/2009) (Entered: 01/14/2009)
01/15/2009	<u>28</u>	STIPULATION AND ORDER to Amend Consent Decree Deadlines. Signed by Judge Samuel Conti on 1/15/09. (tdm, COURT STAFF) (Filed on 1/15/2009) (Entered: 01/15/2009)

### SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs Communities for a Better Environment, Rocky Mountain Clean Air Action, Coalition for a Safe Environment, and Physicians for Social Responsibility-Los Angeles filed Civil Action No. 07-3678 (N.D. Cal.) against United States Environmental Protection Agency and Stephen L. Johnson, Administrator of the United States Environmental Protection Agency ("the United States" or "EPA"), pursuant to section 304(a)(2) of the Clean Air Act ("CAA"), 42 U.S.C. § 7604(a)(2), alleging that EPA failed to perform mandatory duties pursuant to CAA § 109(d)(1) to complete another cycle of review, revision, and promulgation actions for carbon monoxide (hereinafter referred to as "*CBE v. EPA*") ;

WHEREAS, Plaintiffs' claims (other than claims for costs of litigation, including attorneys' fees) in *CBE v. EPA* were resolved by the final judgment entered by the Court on November 24, 2008 (Dkt # 44);

WHEREAS, Plaintiffs and EPA (collectively, "the Parties") wish to effectuate a settlement of the claims for costs of litigation, including attorneys' fees, in *CBE v. EPA* without expensive and protracted litigation and without any admission of fact or law;

NOW THEREFORE, the Parties agree as follows:

1. The United States shall pay, as soon as reasonably practicable, \$65,000 to Plaintiffs' counsel, Robert Ukeiley, P.S.C., by electronic funds transfer in accordance with instructions provided to Defense Counsel by Plaintiffs' counsel Robert Ukeiley. Such payment represents full and final payment to all counsel for Plaintiffs in connection with any requests for fees and costs which could be brought by Plaintiffs at the time this Agreement is executed.
2. Any obligations of the United States to expend funds under this Settlement Agreement are subject to the availability of appropriations in accordance with the

Anti-Deficiency Act, 31 U.S.C. § 1341. This Settlement Agreement shall not be construed to require the United States to obligate or pay funds in contravention of the said Anti-Deficiency Act, 31 U.S.C. § 1341.

3. Plaintiffs agree that payment pursuant to Paragraph 1, within 60 days of the date on which the Agreement has been executed by both parties (or after 60 days if Plaintiffs accept payment after that date), will constitute full and final payment of costs of litigation (including reasonable attorneys' fees) incurred by Plaintiffs in *CBE v. EPA*. Upon payment within 60 days of the date on which the Agreement has been executed (or upon payment after 60 days if Plaintiffs accept payment), Plaintiffs release the United States, including EPA, from any claims regarding such fees and costs.

4. In the event that the United States fails to pay the sum specified in Paragraph 1 of this Agreement within 60 days of the date on which the Agreement has been executed by both parties, Plaintiffs may file a motion with the Court for their costs of litigation (including reasonable attorneys' fees). The parties agree that in litigation over such fee application, they will not disclose to the Court the amount agreed upon in paragraph 1, and that the United States reserves any defenses it may have to a fee application.

5. The undersigned representatives of the parties certify that they are fully authorized by the party or parties they represent to enter into and execute the terms and conditions of the settlement agreement. By signature below, all parties consent to this settlement agreement.

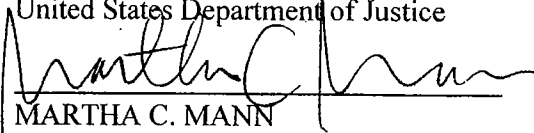
SO AGREED:

FOR THE DEFENDANT

John C. Cruden  
Deputy Assistant Attorney General



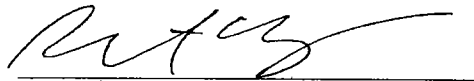
Environment and Natural Resources Division  
United States Department of Justice



MARTHA C. MANN  
Environmental Defense Section  
P.O. Box 23986  
Washington, DC 20004 -3986  
Tel. (202) 514-2664  
Fax. (202) 514-8865  
Email: martha.mann@usdoj.gov

Dated: 1/26/2009

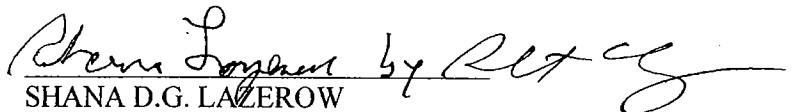
FOR THE PLAINTIFFS



ROBERT S. UKEILEY  
Law Office of Robert Ukeiley  
435R Chestnut St., Ste. 1  
Berea, KY 40403  
Tel. (859) 986-5402  
Fax (866) 618-1017  
Rukeiley@igc.org

Dated

1/21/09



SHANA D.G. LAZEROW  
Communities for a Better Environment  
1440 Broadway, #701  
Oakland, CA 94612  
Tel. (510) 302-0430 ext. 18  
Fax (510) 302-0438  
slazerow@cbeal.org

ADRMOP, CLOSED, E-Filing

**U.S. District Court  
California Northern District (San Francisco)  
CIVIL DOCKET FOR CASE #: 3:07-cv-03678-JSW**

Communities for a Better Environment et al v. United States  
Environmental Protection Agency et al  
Assigned to: Hon. Jeffrey S. White  
Cause: 42:7604 Clear Air Act (Emission Standards)

Date Filed: 07/17/2007  
Date Terminated: 11/24/2008  
Jury Demand: None  
Nature of Suit: 893 Environmental Matters  
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
07/17/2007	<u>1</u>	COMPLAINT against United States Environmental Protection Agency, Stephen L. Johnson ( Filing fee \$ 350, receipt number 34611008475.). Filed by Physicians for Social Responsibility-Los Angeles, Communities for a Better Environment, Rocky Mountain Clean Air Action, Coalition for a Safe Environment. (hdj, COURT STAFF) (Filed on 7/17/2007) Additional attachment(s) added on 7/25/2007 (hdj, COURT STAFF). (Entered: 07/18/2007)
07/17/2007	<u>2</u>	ADR SCHEDULING ORDER: Case Management Statement due by 10/19/2007. Case Management Conference set for 10/26/2007 01:30 PM. (Attachments: # <u>1</u> # <u>2</u> ) (hdj, COURT STAFF) (Filed on 7/17/2007) (Entered: 07/18/2007)
07/17/2007	<u>3</u>	MOTION for leave to appear in Pro Hac Vice-Robert Ukeiley ( Filing fee \$ 210, receipt number 34611008475.) filed by Physicians for Social Responsibility-Los Angeles, Communities for a Better Environment, Rocky Mountain Clean Air Action, Coalition for a Safe Environment. (hdj, COURT STAFF) (Filed on 7/17/2007) Additional attachment(s) added on 7/27/2007 (hdj, COURT STAFF). (Entered: 07/18/2007)
07/17/2007		Received Document (Proposed) Order re <u>3</u> MOTION for leave to appear in Pro Hac Vice ( Filing fee \$ 210, receipt number 34611008475.) MOTION for leave to appear in Pro Hac Vice ( Filing fee \$ 210, receipt number 34611008475.) by Physicians for Social Responsibility-Los Angeles, Communities for a Better Environment, Rocky Mountain Clean Air Action, Coalition for a Safe Environment. (hdj, COURT STAFF) (Filed on 7/17/2007) (Entered: 07/18/2007)
07/17/2007		Summons Issued as to United States Environmental Protection Agency, Stephen L. Johnson. (hdj, COURT STAFF) (Filed on 7/17/2007) (Entered: 07/18/2007)
07/17/2007		CASE DESIGNATED for Electronic Filing. (hdj, COURT STAFF) (Filed on 7/17/2007) (Entered: 07/18/2007)
07/25/2007	<u>4</u>	INITIAL SCHEDULING CONFERENCE ORDER: Case Management Conference set for 10/26/2007 01:30 PM. Case Management Statement due by 10/19/2007.. Signed by Judge Jeffrey S. White on 7/25/07. (jjo, COURT STAFF) (Filed on 7/25/2007) (Entered: 07/25/2007)
08/02/2007	<u>5</u>	SUMMONS Returned Executed by Communities for a Better Environment. United States Environmental Protection Agency served on 7/31/2007, answer due 8/20/2007. <i>answer due 10/1/07</i> (Lazerow, Shana) (Filed on 8/2/2007) (Entered: 08/02/2007)
08/17/2007	<u>6</u>	ORDER by Judge Jeffrey S. White granting <u>3</u> Motion for Pro Hac Vice for Robert Ukeiley (jjo, COURT STAFF) (Filed on 8/17/2007) (Entered: 08/17/2007)
08/17/2007	<u>7</u>	NOTICE of Appearance by Pamela S. Tonglao (Tonglao, Pamela) (Filed on 8/17/2007) (Entered: 08/17/2007)

09/12/2007	<u>8</u>	SUMMONS Returned Executed by Physicians for Social Responsibility-Los Angeles, Communities for a Better Environment, Rocky Mountain Clean Air Action, Coalition for a Safe Environment. Stephen L. Johnson served on 9/4/2005, answer due 9/24/2005. (Ukeiley, Robert) (Filed on 9/12/2007) (Entered: 09/12/2007)
09/12/2007	<u>9</u>	SUMMONS Returned Executed by Physicians for Social Responsibility-Los Angeles, Communities for a Better Environment, Rocky Mountain Clean Air Action, Coalition for a Safe Environment. United States Environmental Protection Agency served on 9/4/2007, answer due 9/24/2007; Stephen L. Johnson served on 9/4/2007, answer due 9/24/2007. 10/1/2007 (Ukeiley, Robert) (Filed on 9/12/2007) (Entered: 09/12/2007)
09/25/2007	<u>10</u>	<b>PLEASE SEE CORRECTED DOCUMENT AT DOCKET NO. 11</b> STIPULATION to extend time for EPA to respond to complaint by United States Environmental Protection Agency, Stephen L. Johnson. (Tonglao, Pamela) (Filed on 9/25/2007) Modified on 9/25/2007 (jjo, COURT STAFF). (Entered: 09/25/2007)
09/25/2007	<u>11</u>	STIPULATION to extend time for defendants to respond to complaint by United States Environmental Protection Agency, Stephen L. Johnson. (Tonglao, Pamela) (Filed on 9/25/2007) (Entered: 09/25/2007)
10/09/2007	<u>12</u>	ANSWER to Complaint by United States Environmental Protection Agency, Stephen L. Johnson. (Tonglao, Pamela) (Filed on 10/9/2007) (Entered: 10/09/2007)
10/10/2007	<u>13</u>	ADR Clerks Notice re: Non-Compliance with Court Order. (tjs, COURT STAFF) (Filed on 10/10/2007) (Entered: 10/10/2007)
10/11/2007	<u>14</u>	ADR Certification (ADR L.R. 3-5b) of discussion of ADR options from CBE (Lazerow, Shana) (Filed on 10/11/2007) (Entered: 10/11/2007)
10/11/2007	<u>15</u>	ADR Certification (ADR L.R. 3-5b) of discussion of ADR options for Rocky Mountain (Lazerow, Shana) (Filed on 10/11/2007) (Entered: 10/11/2007)
10/11/2007	<u>16</u>	ADR Certification (ADR L.R. 3-5b) of discussion of ADR options by Plaintiffs' Attorney (Lazerow, Shana) (Filed on 10/11/2007) (Entered: 10/11/2007)
10/15/2007	<u>17</u>	NOTICE of need for ADR Phone Conference (ADR L.R. 3-5 d) (Lazerow, Shana) (Filed on 10/15/2007) (Entered: 10/15/2007)
10/17/2007	<u>18</u>	JOINT CASE MANAGEMENT STATEMENT filed by Physicians for Social Responsibility-Los Angeles, Communities for a Better Environment, Rocky Mountain Clean Air Action, Coalition for a Safe Environment. (Ukeiley, Robert) (Filed on 10/17/2007) (Entered: 10/17/2007)
10/19/2007	<u>19</u>	ADR Clerks Notice Setting ADR Phone Conference on 10/24/07 at 1:30 p.m. Please take note that plaintiff's counsel initiates the call to all parties. (tjs, COURT STAFF) (Filed on 10/19/2007) (Entered: 10/19/2007)
10/24/2007		ADR Remark: ADR Phone Conference conducted on 10/24/07 by HAH. (tjs, COURT STAFF) (Filed on 10/24/2007) (Entered: 10/26/2007)
10/26/2007	<u>20</u>	Minute Entry: Initial Case Management Conference held on 10/26/2007 before Judge Jeffrey S. White (Date Filed: 10/26/2007). (Court Reporter Jim Yeomans.) (jjo, COURT STAFF) (Date Filed: 10/26/2007) (Entered: 10/29/2007)
11/16/2007	<u>21</u>	Notice of MOTION for Summary Judgment filed by Communities for a Better Environment. Motion Hearing set for 2/22/2008 09:00 AM in Courtroom 2, 17th Floor, San Francisco. (Lazerow, Shana) (Filed on 11/16/2007) Modified on 11/19/2007 (hdj, COURT STAFF). (Entered: 11/16/2007)

11/16/2007	<u>22</u>	Memorandum of <i>Points &amp; Authorities in Support <u>21</u> filed by Communities for a Better Environment. Motion Hearing set for 2/22/2008 09:00 AM in Courtroom 2, 17th Floor, San Francisco. (Lazerow, Shana) (Filed on 11/16/2007) Modified on 11/19/2007 (hdj, COURT STAFF). (Entered: 11/16/2007)</i>
11/16/2007	<u>23</u>	Declaration of Maxine Oliver-Benson <u>21</u> in Support of P Summary Judgment filed by Communities for a Better Environment. (Lazerow, Shana) (Filed on 11/16/2007) Modified on 11/19/2007 (hdj, COURT STAFF). (Entered: 11/16/2007)
11/16/2007	<u>24</u>	Declaration of Erin Robertson in Support of <u>22</u> MOTION for Summary Judgment <i>Points &amp; Authorities</i> , <u>21</u> MOTION for Summary Judgment, <u>23</u> Declaration in Support of <i>P Summary Judgment Mtn</i> filed by Communities for a Better Environment. (Related document(s) <u>22</u> , <u>21</u> , <u>23</u> ) (Lazerow, Shana) (Filed on 11/16/2007) (Entered: 11/16/2007)
11/16/2007	<u>25</u>	Declaration of David Howekamp in Support of <u>22</u> MOTION for Summary Judgment <i>Points &amp; Authorities</i> , <u>21</u> MOTION for Summary Judgment, <u>24</u> Declaration in Support, <u>23</u> Declaration in Support of <i>P Summary Judgment Mtn</i> filed by Communities for a Better Environment. (Attachments: # <u>1</u> Exhibit B# <u>2</u> Exhibit B# <u>3</u> Exhibit C)(Related document(s) <u>22</u> , <u>21</u> , <u>24</u> , <u>23</u> ) (Lazerow, Shana) (Filed on 11/16/2007) (Entered: 11/16/2007)
11/16/2007	<u>26</u>	Declaration of Carla Perez <u>22</u> in support of P Summary Judgment filed by Communities for a Better Environment. (Lazerow, Shana) (Filed on 11/16/2007) Modified on 11/19/2007 (hdj, COURT STAFF). (Entered: 11/16/2007)
11/16/2007	<u>27</u>	Declaration of Jeremy Nichols <u>22</u> in support of P Summary Judgment Motion filed by Communities for a Better Environment. (Lazerow, Shana) (Filed on 11/16/2007) Modified on 11/19/2007 (hdj, COURT STAFF). (Entered: 11/16/2007)
11/16/2007	<u>28</u>	NOTICE of Change In Counsel by Shana D.G. Lazerow (Lazerow, Shana) (Filed on 11/16/2007) (Entered: 11/16/2007)
11/16/2007	<u>29</u>	Proposed Order <u>22</u> Granting Plaintiffs' Motion for Summary Judgment by Communities for a Better Environment. (Lazerow, Shana) (Filed on 11/16/2007) Modified on 11/19/2007 (hdj, COURT STAFF). (Entered: 11/16/2007)
12/07/2007	<u>30</u>	Cross MOTION for Summary Judgment <i>on Remedy</i> filed by United States Environmental Protection Agency, Stephen L. Johnson. Motion Hearing set for 2/22/2007 09:00 AM in Courtroom 2, 17th Floor, San Francisco. (Tonglao, Pamela) (Filed on 12/7/2007) (Entered: 12/07/2007)
12/07/2007	<u>31</u>	Memorandum in Opposition re <u>22</u> MOTION for Summary Judgment <i>Points &amp; Authorities and Memorandum in Support of EPA's Cross-Motion for Summary Judgment on Remedy <u>30</u></i> filed by United States Environmental Protection Agency, Stephen L. Johnson. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Declaration of Stephen D. Page, # <u>3</u> Declaration of Mary Ross, # <u>4</u> Declaration of Karen Martin, # <u>5</u> Proposed Order)(Tonglao, Pamela) (Filed on 12/7/2007) (Entered: 12/07/2007)
01/04/2008	<u>32</u>	Reply Memorandum re <u>22</u> MOTION for Summary Judgment <i>Points &amp; Authorities</i> filed by Physicians for Social Responsibility-Los Angeles, Communities for a Better Environment, Rocky Mountain Clean Air Action, Coalition for a Safe Environment. (Attachments: # <u>1</u> Exhibit 1)(Ukeiley, Robert) (Filed on 1/4/2008) (Entered: 01/04/2008)
01/25/2008	<u>33</u>	Reply to Opposition re <u>30</u> Cross MOTION for Summary Judgment <i>on Remedy</i> filed by United States Environmental Protection Agency, Stephen L. Johnson. (Attachments: # <u>1</u> Exhibit 1 - Missouri Coalition for the Env't order)(Tonglao, Pamela) (Filed on 1/25/2008) (Entered: 01/25/2008)

01/30/2008	<u>34</u>	NOTICE by Physicians for Social Responsibility-Los Angeles, Communities for a Better Environment, Rocky Mountain Clean Air Action, Coalition for a Safe Environment re <u>22</u> MOTION for Summary Judgment <i>Points &amp; Authorities of Supplemental Authority</i> (Attachments: # <u>1</u> Exhibit 1)(Ukeiley, Robert) (Filed on 1/30/2008) (Entered: 01/30/2008)
02/21/2008	<u>35</u>	ORDER Vacating Hearing Date re <u>30</u> Cross MOTION for Summary Judgment <i>on Remedy</i> filed by Stephen L. Johnson, United States Environmental Protection Agency, Motions terminated: <u>30</u> . Signed by Judge Jeffrey S. White on 2/21/08. (fj, COURT STAFF) (Filed on 2/21/2008) (Entered: 02/21/2008)
04/16/2008	<u>36</u>	NOTICE of Substitution of Counsel by Paul Cirino (Cirino, Paul) (Filed on 4/16/2008) (Entered: 04/16/2008)
05/05/2008	<u>37</u>	ORDER by Judge Jeffrey S. White granting <u>22</u> Plaintiffs' Motion for Summary Judgment and denying EPA's Cross-Motion (jswlc1, COURT STAFF) (Filed on 5/5/2008) (Entered: 05/05/2008)
06/24/2008	<u>38</u>	Joint MOTION to Amend/Correct <u>37</u> Order on Motion for Summary Judgment filed by United States Environmental Protection Agency, Stephen L. Johnson. (Attachments: # <u>1</u> Proposed Order)(Cirino, Paul) (Filed on 6/24/2008) (Entered: 06/24/2008)
06/24/2008	<u>39</u>	ORDER by Judge Jeffrey S. White granting <u>38</u> Stipulated Motion to Correct Clerical Mistake in May 5, 2008. (mat, COURT STAFF) (Filed on 6/24/2008) (Entered: 06/25/2008)
07/07/2008	<u>40</u>	RESPONSE to re <u>37</u> Order on Motion for Summary Judgment <i>re: Revised Schedule with Interim Deadlines</i> by United States Environmental Protection Agency, Stephen L. Johnson. (Cirino, Paul) (Filed on 7/7/2008) (Entered: 07/07/2008)
10/27/2008	<u>41</u>	NOTICE of Appearance by Martha Collins Mann <i>on behalf of Defendants</i> (Mann, Martha) (Filed on 10/27/2008) (Entered: 10/27/2008)
11/11/2008	<u>42</u>	NOTICE by Communities for a Better Environment <i>of Submitted Matter</i> (Attachments: # <u>1</u> Affidavit Lazerow Declaration ISO Unopposed Order, # <u>2</u> Proposed Order Proposed Order Establishing Schedule)(Lazerow, Shana) (Filed on 11/11/2008) (Entered: 11/11/2008)
11/14/2008	<u>43</u>	ORDER GRANTING <u>42</u> Establishing Schedule to Review National Ambient Air Quality Standard for Carbon Monoxide. Signed by Judge Jeffrey S. White on November 14, 2008. (jswlc2, COURT STAFF) (Filed on 11/14/2008) (Entered: 11/14/2008)
11/24/2008	<u>44</u>	JUDGMENT. Signed by Judge Jeffery S. White on 11/24/08. (jjo, COURT STAFF) (Filed on 11/24/2008) (Entered: 11/24/2008)
11/26/2008	<u>45</u>	STIPULATION re <u>44</u> Judgment <i>for extension of time to file motion for attorney's fees</i> by United States Environmental Protection Agency, Stephen L. Johnson. (Mann, Martha) (Filed on 11/26/2008) (Entered: 11/26/2008)
12/01/2008	<u>46</u>	ORDER GRANTING <u>45</u> Stipulation for extension of time to file motion for attorney's fees. Signed by Judge Jeffrey S. White on 12/1/08. (jjo, COURT STAFF) (Filed on 12/1/2008) (Entered: 12/01/2008)
12/12/2008	<u>47</u>	STIPULATION <i>by all Parties for Extension of Time Re Motion for Attorney Fees</i> filed by United States Environmental Protection Agency, Stephen L. Johnson. (Mann, Martha) (Filed on 12/12/2008) (Entered: 12/12/2008)
12/12/2008	<u>48</u>	ORDER Granting <u>47</u> Stipulation re Motion. Signed by Judge Jeffrey S. White on December 12, 2008. (jswlc1, COURT STAFF) (Filed on 12/12/2008) (Entered: 12/12/2008)

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01/23/2009	<u>49</u>	STIPULATION by All Parties and Proposed Order for Extension of Time to File Motion for Attorneys' Fees by United States Environmental Protection Agency, Stephen L. Johnson. (Mann, Martha) (Filed on 1/23/2009) (Entered: 01/23/2009)
01/26/2009	<u>50</u>	ORDER GRANTING <u>49</u> Stipulation by All Parties for Extension of Time to File Motion for Attorneys' Fees. Signed by Judge Jeffrey S. White on 1/26/09. (jjo, COURT STAFF) (Filed on 1/26/2009) (Entered: 01/26/2009)